

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE

FREDRIC RELLER,)	
)	
PLAINTIFF,)	
)	
VS.)	SUPERIOR COURT
)	CASE NO. BC 261796
PHILIP MORRIS, INCORPORATED,)	
A CORPORATION, ET AL.,)	
)	
DEFENDANTS.)	
)	

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
WEDNESDAY, JUNE 25, 2003
P.M. SESSION
PAGES 7105 THROUGH 7225, INCLUSIVE

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1 CASE NUMBER: BC 261796
2 CASE NAME: RELLER V. PHILIP MORRIS
3 LOS ANGELES, CALIFORNIA WEDNESDAY, JUNE 25, 2003
4 DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: LINDA BICHE, CSR NO. 3359, RMR, CRR
7 TIME: 12:20 P.M.

8

9

- - O - -

10

11

RICHARD POLLAY,

12

WITNESS, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

13

THE COURT: MEA CULPA, MEA CULPA. I'M TWO MINUTES

14

LATE. SHAME ON ME. SORRY ABOUT THAT, FOLKS.

15

RELLER VERSUS PHILIP MORRIS, BC 261796.

16

THE RECORD SHOULD REFLECT THAT ALL JURORS ARE

17

PRESENT. ALL ALTERNATES ARE PRESENT.

18

ALL COUNSEL ARE PRESENT.

19

DR. LEWIS IS PRESENT.

20

DR. POLLAY IS PRESENT IN THE WITNESS STAND.

21

YOU'RE STILL UNDER OATH.

22

A COUPLE OF THINGS, FOLKS. THIS PLACE IS A

23

BEEHIVE OF ACTIVITY TODAY, NOT JUST YOUR CASE. THERE'S A

24

DEPOSITION THAT I'M SUPERVISING GOING ON IN THE JURY ROOM IN

25

THERE. SO IF YOU SEE PEOPLE, IF YOU HEAR PEOPLE, LIKE

26

WALKING IN AND OUT OF THE BACK PART, THAT'S WHAT IT IS.

27

DON'T BE BOTHERED BY IT. IT'S MY PROBLEM. NOT YOUR PROBLEM.

28

AND THE ONLY REASON I'M PARTLY LATE FOR LUNCH

7106

1

IS BECAUSE THEY NEEDED SOME ASSISTANCE.

2

SO THAT'S EARLIER. SO I RAN A LITTLE LATER

3

THAN I PLANNED.

4

OKAY. I HAVE TWO QUESTIONS FROM YOU FOLKS.

5

IS THE WITNESS' OPINION CONSIDERED AS EVIDENCE,

6

AND IS THE WITNESS' OPINION ON A HYPOTHETICAL QUESTION TO BE

7

CONSIDERED AS EVIDENCE?

8

GOING BACK TO THE BAJI INSTRUCTIONS THAT WE

9

HAD, FIRST, LET'S TALK ABOUT HYPOTHETICAL QUESTION.

10

(READING:)

11

12

A HYPOTHETICAL QUESTION IS A

13

QUESTION IN WHICH AN EXPERT WITNESS IS ASKED

14

TO ASSUME THAT CERTAIN FACTS ARE TRUE AND TO

15

GIVE AN OPINION BASED UPON THAT ASSUMPTION.

16

IF ANY FACT ASSUMED IN SUCH A QUESTION HAS

17

NOT BEEN ESTABLISHED BY THE EVIDENCE, YOU

18

SHOULD DETERMINE THE EFFECT OF THAT OMISSION

19

UPON THE VALUE OF AN OPINION BASED ON THAT

20

FACT.

21 AND IN RESOLVING THE CONFLICT
22 IN THE TESTIMONY OF EXPERT WITNESSES, IF
23 THERE IS ANY, SHOULD WEIGH THE OPINION OF
24 ONE EXPERT AGAINST THAT OF ANOTHER. IN
25 DOING THIS, YOU SHOULD CONSIDER THE
26 QUALIFICATIONS AND BELIEVABILITY OF EACH
27 WITNESS, THE REASONS FOR EACH OPINION AND
28 THE MATTER UPON WHICH IT IS BASED.

7107

1 IN SHORT, FOLKS, YOU'RE GIVEN A HYPOTHETICAL
2 THAT CONSISTS OF FACTS, A, B, C AND D, AND THEN YOU'LL
3 HAVE -- YOU'LL HEAR AN OPINION BY A WITNESS. THIS WITNESS OR
4 ANY OTHER WITNESS. IF YOU THINK FACT A OR B, OR WHATEVER,
5 ISN'T TRUE OR ISN'T ACCURATE, THEN YOU LOOK AT THE
6 HYPOTHETICAL AND YOU LOOK AT THE OPINION AND SAY, WELL, THE
7 OPINION STILL MIGHT BE TRUE, EVEN IF I TAKE AWAY ONE OF THE
8 FACTS. OR YOU CAN SAY, AH, THE OPINION IS WORTHLESS, OUT.
9 OKAY. IT'S UP TO YOU FOLKS TO DECIDE.

10 AND AGAIN, I ONLY ALLOW IN -- LET ME BACK UP.

11 IT'S MY JOB TO GIVE THE ATTORNEYS LEEWAY TO ASK
12 HYPOTHETICAL QUESTIONS BASED ON THE POTENTIAL INTERPRETATIONS
13 OF THE FACTS, IF THEY'RE FOUND TO BE TRUE, BUT I DON'T KNOW
14 IF THEY'RE GOING TO BE FOUND TO BE TRUE. THAT'S YOUR ISSUE.
15 SO SIMPLY BECAUSE I ALLOW FOR A HYPOTHETICAL QUESTION DOES
16 NOT MEAN THAT I'M ACCEPTING IT AS TRUE, THAT I'M ACCEPTING
17 THE UNDERLYING FACTS. IT SIMPLY MEANS THAT THERE'S SOME
18 EVIDENCE I THINK HAS COME IN ABOUT THAT FACT ON SOME LEVEL AT
19 SOME TIME DURING THE TRIAL.

20 THAT'S ALL I DO. I'M A GATEKEEPER ONLY IN THAT
21 WAY. IT'S UP TO YOU FOLKS TO DECIDE WHETHER THE UNDERLYING
22 FACTS ARE TRUE AND WHETHER OR NOT THE -- AND WHAT WEIGHT DO
23 YOU WANT TO GIVE TO THE EXPERT OPINION.

24 DO YOU ALL UNDERSTAND THAT?

25 DOES THAT ANSWER YOUR QUESTION?

26 JUROR HAMENT: YES, THANK YOU.

27 THE COURT: MR. PIUZE, YOU'RE ON.

28

7108

1 DIRECT EXAMINATION (RESUMED)

2 BY MR. PIUZE:

3 Q. OKAY. SO HERE'S A HYPOTHETICAL QUESTION. I'M
4 NOW DIRECTING YOUR ATTENTION TO EXHIBIT 172.

5 WHEN I ASK -- I'M GOING TO TELL YOU IN ADVANCE,
6 WHEN I ASK THIS QUESTION, I'M GOING TO LEAVE OUT HERE IN
7 1964, PHILIP MORRIS' REACTION TO THE SURGEON GENERAL
8 (READING):

9

10 WE MUST IN THE NEAR FUTURE
11 PROVIDE SOME ANSWERS WHICH WILL GIVE SMOKERS
12 A PSYCHOLOGICAL CRUTCH AND A SELF-RATIONALE
13 TO CONTINUE SMOKING.

14

15 THAT'S OUT OF THE HYPOTHETICAL. OKAY?

16 A. OKAY.

17 Q. 1972, THE ROPER PROPOSAL (READING):

18

19 FOR 20 YEARS, THIS INDUSTRY --

20

21 THE COURT: YOU DON'T NEED TO REPEAT IT. JUST SAY,
22 THAT'S OUT. OKAY. LET'S NOT REPEAT IT OVER AND OVER AGAIN.

23 MR. PIUZE: WELL, THESE WEREN'T MENTIONED THIS
24 MORNING, YOUR HONOR, AT ALL.

25 THE COURT: OKAY. I APOLOGIZE.

26 MR. PIUZE: (READING:)
27
28 FOR 20 YEARS, THIS INDUSTRY
7109
1 HAS EMPLOYED A SINGLE STRATEGY TO DEFEND
2 ITSELF ON THREE MAJOR FRONTS, LITIGATION,
3 POLITICS, AND PUBLIC OPINION -- CREATING
4 DOUBT ABOUT THE HEALTH CHARGE WITHOUT
5 ACTUALLY DENYING IT.
6
7 THAT'S OUT OF THIS HYPOTHETICAL. OKAY?
8 A. OKAY.
9 Q. IN 1979, THE TOBACCO INSTITUTE IS SAYING
10 (READING):
11
12 SCIENTISTS HAVE NOT PROVEN
13 THAT CIGARETTE SMOKE CAUSES HUMAN DISEASE.
14
15 OUT OF THE HYPOTHETICAL. ALL RIGHT?
16 A. OKAY.
17 Q. IN 1984 TO THE CONGRESS, THE TOBACCO INSTITUTE
18 SAYING (READING):
19
20 IT IS NOT KNOWN WHETHER SMOKING
21 HAS A ROLE IN THE DEVELOPMENT OF VARIOUS
22 DISEASES AND THAT A GREAT DEAL MORE RESEARCH
23 IS NEEDED TO UNCOVER THE CAUSE AND
24 MECHANISMS INVOLVED IN THEIR ONSET.
25
26 OUT OF THE HYPOTHETICAL. OKAY?
27 THE COURT: EXCUSE ME. WAIT A MINUTE.
28 MR. PIUZE, YOU DIDN'T PUT THESE IN BEFORE, SO
7110
1 WHY ARE YOU GOING OVER IT NOW?
2 THE JURY'S GOING TO DISREGARD EVERYTHING THAT
3 HE SAID FROM THE BEGINNING OF HIS STATEMENT JUST NOW IF IT
4 WASN'T IN THIS MORNING.
5 I DON'T NEED TO HEAR ABOUT IT NOW, AND NEITHER
6 DOES THE JURY. LET'S JUST TALK ABOUT WHAT WAS IN YOUR
7 HYPOTHETICAL, WHICH I'M SURE WE ALL REMEMBER, MR. PIUZE.
8 MR. PIUZE: YOU DON'T WANT ME TO SAY IT AGAIN?
9 THE COURT: THAT'S WHAT I'M TELLING YOU.
10 MR. PIUZE: OKAY.
11 THE COURT: I DON'T WANT TO HEAR IT AGAIN, AND I
12 CERTAINLY DON'T WANT TO HEAR WHAT'S OUT WHEN IT WAS NEVER IN.
13 Q. BY MR. PIUZE: BASED ON THE HYPOTHETICAL I GAVE
14 YOU THIS MORNING, IN OTHER WORDS, ONLY TAKING INTO ACCOUNT
15 THE PUBLIC HEALTH DOCUMENTS, THE PUBLIC HEALTH STATEMENTS, DO
16 YOU BELIEVE THAT THE ADVERTISING WAS MISLEADING?
17 A. I DO.
18 Q. BECAUSE EVERYTHING I SAID THIS MORNING IN THE
19 HYPOTHETICAL HAD TO DO WITH HEALTH AND LUNG CANCER, BUT
20 NOTHING HAD TO DO WITH ADDICTION. I WANT TO LEAVE THAT ASIDE
21 FOR NOW.
22 STATE YOUR REASONS FOR YOUR OPINION.
23 A. BECAUSE THE IMAGERY OF PICTURES OF HEALTH AND
24 THE LANGUAGE OF LIGHT, KIND, GENTLE, SMOOTH, ALL SUGGEST THAT
25 THE PRODUCT IS BENIGN, WHEN, IN FACT, IT'S NOT. IT CAUSES
26 SERIOUS AND DEADLY DISEASE.
27 Q. OKAY. NOW, ADD THIS TO THE HYPOTHETICAL.
28 STARTING IN THE LATE '60S OR EARLIER, BUT BY
7111
1 THE LATE '60S, PHILIP MORRIS PSYCHOLOGISTS AND SCIENTISTS WHO

2 DEALT WITH ADDICTION ISSUES ACKNOWLEDGED THAT NICOTINE WAS A
3 DRUG, THAT WHAT THEY WERE SELLING WAS THAT DRUG, THAT THE
4 DRUG WAS ADDICTIVE, AND THAT THIS INTERNAL OPINION AT
5 PHILIP MORRIS WAS NEVER CHANGED. OKAY.

6 CAN YOU ASSUME THAT?

7 A. YES.

8 Q. NOW, ADDING THAT TO THE HYPOTHETICAL AND
9 DRAWING YOUR ATTENTION SPECIFICALLY TO THE MARLBORO MAN AND
10 THE INDEPENDENCE ISSUE, DOES THAT -- IS THERE A FURTHER
11 REASON WHY YOU BELIEVE THE ADS TO BE MISLEADING?

12 A. YES.

13 Q. STATE YOUR REASON, PLEASE.

14 A. I BELIEVE THE IMAGE OF INDEPENDENCE IS DIRECTLY
15 CONTRADICTED BY THE REALITY OF ADDICTION.

16 MR. PIUZE: OKAY. I'M DONE. THANK YOU VERY MUCH.

17 NO FURTHER QUESTIONS OF THIS WITNESS AT THIS
18 TIME.

19 THE COURT: MR. GARDNER.

20

21 CROSS-EXAMINATION

22 BY MR. GARDNER:

23 Q. GOOD AFTERNOON, DR. POLLAY.

24 A. GOOD AFTERNOON.

25 Q. YOU'RE NOT A MEDICAL DOCTOR, ARE YOU?

26 A. NO.

27 Q. YOU'RE NOT AN EPIDEMIOLOGIST, EITHER, ARE YOU?

28 A. THAT'S CORRECT.

7112

1 Q. OKAY. YOU'RE NOT A MEMBER OF THE PUBLIC HEALTH
2 SERVICE?

3 A. THAT'S CORRECT.

4 Q. YOU'VE NEVER READ THE 7,000 ARTICLES THAT WERE
5 REVIEWED IN PREPARING THE 1964 SURGEON GENERAL'S REPORT, HAVE
6 YOU?

7 A. I HAVEN'T READ ALL 7,000. I'VE READ MANY OF
8 THE ARTICLES, BUT NOT ALL 7,000.

9 Q. YOU DON'T HAVE ANY EXPERTISE IN BIOLOGY, DO
10 YOU?

11 A. THAT'S CORRECT.

12 Q. YOU DON'T HAVE ANY EXPERTISE IN TOXICOLOGY?

13 A. THAT'S CORRECT.

14 Q. YOU DON'T HAVE ANY EXPERTISE IN SMOKE
15 CHEMISTRY, DO YOU?

16 A. THAT'S CORRECT.

17 Q. IN FACT, THE BOTTOM LINE IS, REALLY, YOU'RE NOT
18 A SCIENTIST, YOU'RE A MARKETER; ISN'T THAT RIGHT?

19 A. THAT'S CORRECT. I'VE BEEN A BUSINESS SCHOOL
20 PROFESSOR.

21 Q. BUSINESS SCHOOL PROFESSOR, NOT A HARD-CORE
22 SCIENTIST, THOUGH, RIGHT?

23 A. THAT'S CORRECT. I MEAN, I HAD AN ENGINEERING
24 DEGREE, BUT I'M NOT A PRACTICING SCIENTIST.

25 Q. YOU DON'T HAVE THE EXPERTISE IN EPIDEMIOLOGY OR
26 THE MEDICAL SCIENCES TO HAVE WRITTEN SOME OF THE PAPERS THAT
27 WE LOOKED AT EARLIER TODAY, DO YOU?

28 A. THAT'S CORRECT.

7113

1 Q. OKAY. YOU'RE HERE TO TALK ABOUT MARKETING AND
2 ADVERTISING, RIGHT?

3 A. THAT'S RIGHT. AND THE TOPICS, THE SUBTOPICS
4 WITHIN THOSE AREAS.

5 Q. FAIR ENOUGH. BUT EPIDEMIOLOGY IS NOT A
6 SUBTOPIC OF MARKETING?

7 A. WELL, THERE ARE ASPECTS OF EPIDEMIOLOGY THAT
8 ARE MARKETING. THERE'S DEFINITELY OVERLAP BETWEEN THE TWO
9 AREAS.

10 Q. THERE MAY BE OVERLAP. I'LL TAKE YOUR WORD FOR
11 THAT. BUT YOU'RE NOT AN EPIDEMIOLOGIST, RIGHT?

12 A. THAT'S CORRECT.

13 Q. YOU'VE HEARD THE NAME SIR RICHARD DOLL, HAVE
14 YOU?

15 A. YES.

16 Q. YOU'VE BEEN INVOLVED IN THESE CASES FOR A LONG
17 TIME?

18 A. YES.

19 Q. SIR RICHARD DOLL IS AN EXPERT CALLED BY
20 PLAINTIFFS FREQUENTLY IN THESE CASES?

21 A. I DON'T KNOW HOW FREQUENTLY, BUT CERTAINLY FROM
22 TIME TO TIME.

23 Q. DID YOU KNOW HE'S AN EPIDEMIOLOGIST, DON'T YOU?

24 A. YES.

25 Q. I WANT YOU TO ASSUME THAT HE TESTIFIED IN THIS
26 CASE.

27 CAN YOU DO THAT FOR ME?

28 A. YES.

7114

1 Q. WE'RE GOING TO TALK ABOUT SOME THINGS THAT
2 SIR RICHARD DOLL SAID. BUT BEFORE WE GET THERE, I'D LIKE TO
3 TALK TO YOU ABOUT SOME TESTIMONY THAT YOU'VE GIVEN.

4 THERE'S NOT A SINGLE MISSTATEMENT OF FACT IN
5 ANY MARLBORO AD FROM 1964 TO 1972 -- WHICH I WANT YOU TO
6 ASSUME IS THE ENTIRE TIME MR. RELLER SMOKED. OKAY?

7 YOU GOT THAT?

8 '64 TO '72, MR. RELLER SMOKING MARLBOROS?

9 A. YES.

10 Q. OKAY. YOU'RE GOING TO ASSUME THAT FOR ME?

11 A. YES.

12 Q. OKAY. NOW, I WANT TO ASK YOU IF THERE'S A
13 SINGLE MISSTATEMENT OF FACT IN ANY MARLBORO AD FROM 1964 TO
14 1972.

15 THERE'S NOT, IS THERE?

16 A. I DON'T THINK THERE ARE ANY FACTS, PERIOD, MUCH
17 LESS MISSTATEMENT OF FACTS. IT'S NOT AN INFORMATIVE STYLE OF
18 ADVERTISING. IT'S CLEAR IMAGERY.

19 Q. SO THE ANSWER TO MY QUESTION ABOUT WHETHER
20 THERE IS A SINGLE MISSTATEMENT OF FACT IN ANY MARLBORO AD
21 DURING THE ENTIRE TIME MR. RELLER SMOKED THEM IS NO; ISN'T
22 THAT RIGHT, DR. POLLAY?

23 A. THAT'S CORRECT.

24 Q. OKAY. AND THE SAME THING IS TRUE FOR
25 BENSON & HEDGES' MENTHOL ADS FROM 1972 TO 2000, AND I WANT
26 YOU TO ASSUME THAT'S THE ENTIRE TIME THAT MR. RELLER SMOKED
27 BENSON & HEDGES MENTHOL.

28 CAN YOU DO THAT FOR ME?

7115

1 A. YES.

2 Q. THE SAME THING'S TRUE FROM 1972 TO 2000 FOR
3 BENSON & HEDGES AND MENTHOL ADS, RIGHT?

4 THERE'S NOT A SINGLE MISSTATEMENT OF FACT IN
5 ANY OF THOSE 10,000 ADS YOU HAVE UP THERE AT THE UNIVERSITY,
6 RIGHT?

7 A. THAT'S CORRECT.

8 Q. OKAY. NOW, I WANT TO, SINCE WE'VE SPENT MOST
9 OF THE DAY TODAY TALKING ABOUT HYPOTHETICALS, I THINK IT'S
10 TIME THAT WE TALK ABOUT SOME HYPOTHETICALS.

11 ALL RIGHT?

12 ARE YOU READY TO GO?
13 A. YES.
14 Q. OKAY. AS WE'VE JUST ESTABLISHED -- YOU'RE NOT
15 A SCIENTIST, RIGHT?
16 RIGHT?
17 A. RIGHT.
18 Q. YOU'RE NOT AN EPIDEMIOLOGIST, RIGHT?
19 A. RIGHT.
20 Q. NOT A MEDICAL DOCTOR, RIGHT?
21 A. RIGHT.
22 Q. YOU'RE A PROFESSOR OF MARKETING?
23 A. RIGHT.
24 Q. OKAY. SO I WANT YOU TO ASSUME THE TRUTH OF THE
25 FACTS OF MY HYPOTHETICAL, JUST AS YOU DID FOR MR. PIUZE.
26 CAN YOU DO THAT FOR ME?
27 A. OKAY.
28 Q. AND AT THE END OF MY HYPOTHETICAL, I'M GOING TO
7116
1 ASK YOU A COUPLE OF QUESTIONS, JUST LIKE MR. PIUZE DID.
2 CAN YOU DO THAT?
3 A. OKAY.
4 Q. OKAY. ASSUME THE TRUTH OF ALL THE SCIENTIFIC
5 FACTS I'M GOING TO LAY OUT FOR YOU.
6 OKAY?
7 A. OKAY.
8 Q. HERE WE GO.
9 I WANT YOU TO ASSUME THAT DR. HAMMOND IS A
10 WELL-RESPECTED SCIENTIST WHO SPENT A LOT OF TIME STUDYING THE
11 ISSUE OF SMOKING AND CANCER IN THE 1950S.
12 CAN YOU DO THAT FOR ME?
13 A. YES.
14 Q. OKAY. I WANT YOU TO ASSUME THAT HE'S
15 WORLD-CLASS.
16 GOT THAT?
17 A. OKAY.
18 Q. OKAY. LET'S SEE IF I CAN MAKE IT FOCUS ANY
19 BETTER THAN WE'VE SEEN IT IN THE PAST.
20 THE ANSWER SEEMS TO BE NO.
21 THE COURT: IS THAT A NEW EXHIBIT THAT I HAVE TO
22 MARK?
23 MR. GARDNER: ACTUALLY, YOUR HONOR, I BELIEVE THIS
24 WAS MARKED EARLIER, BUT I MUST CONFESS, I DON'T KNOW THE
25 NUMBER.
26 THE COURT: DO YOU WANT TO TELL ME WHAT IT WAS?
27 MR. GARDNER: YES. IT'S A FEBRUARY 1954 ARTICLE FROM
28 "U.S. NEWS AND WORLD REPORT."
7117
1 THE COURT: GEE, I DON'T REMEMBER THAT.
2 MR. GARDNER: IT WAS USED DURING DR. DOLL'S
3 DEPOSITION, YOUR HONOR. IT MAY NOT HAVE BEEN ADMITTED INTO
4 EVIDENCE YET.
5 THE COURT: I DON'T THINK IT WAS MARKED EVEN, BECAUSE
6 IF IT WAS GOING ON DURING THAT, I DIDN'T MARK THE THINGS
7 REFERRED TO.
8 SO WHY DON'T WE GIVE IT A NUMBER.
9 MR. GARDNER: FAIR ENOUGH. LET'S GIVE IT A NUMBER.
10 THE COURT: 173, AND IT'S A "U.S. NEWS AND WORLD
11 REPORT" -- I'M SORRY, DATED WHO, WHAT?
12 MR. GARDNER: FEBRUARY 1954.
13 THE COURT: THANK YOU.
14
15 (I.D. 173- 2-54 "U.S. NEWS AND WORLD
16 REPORT" DOCUMENT)

17
18 MR. PIUZE: YOUR HONOR, I OBJECTED TO THIS DURING THE
19 DEPOSITION OF DR. DOLL IN LONDON, AND I DO AGAIN. SO I WISH
20 HE WOULDN'T DISPLAY IT YET BECAUSE --
21 THE COURT: CAN YOU BRING IT ON OVER HERE SO I CAN
22 LOOK AT IT FOR JUST A SECOND.
23 MR. PIUZE: THE WITNESS HASN'T READ OR RELIED OR
24 REVIEWED UPON IT.
25 MR. GARDNER: I'M USING IT AS A BASIS OF A
26 HYPOTHETICAL QUESTION, YOUR HONOR.
27 THE COURT: LET ME JUST SEE WHAT IT IS. OKAY.
28 MR. GARDNER: SURE.

7118

1 THE COURT: THE OBJECTION IS NOTED AND OVERRULED.
2 YOU CAN USE IT AS PART OF A HYPOTHETICAL. AND IT WAS
3 REFERRED TO EARLIER BY DR. DOLL.
4 Q. BY MR. GARDNER: I WANT YOU TO ASSUME THAT IN
5 1954, DR. HAMMOND, WORLD-CLASS SCIENTIST WE'VE BEEN TALKING
6 ABOUT, WAS ASKED THE FOLLOWING QUESTION AND GAVE THE
7 FOLLOWING ANSWER (READING):

8
9 DOES SMOKING REALLY
10 CAUSE LUNG CANCER, DR. HAMMOND?
11 PEOPLE ARE SAYING ALL SORTS OF
12 THINGS ABOUT CIGARETTE SMOKING --
13 A. THAT'S JUST WHAT WE
14 ARE TRYING TO FIND OUT. THERE IS SOME
15 EVIDENCE THAT IT MAY BE SO. FOR EXAMPLE,
16 MATERIAL COLLECTED FROM CIGARETTE SMOKE WILL
17 PRODUCE CANCER ON THE SKIN OF A SUSCEPTIBLE
18 MOUSE IF YOU KEEP UP THE EXPERIMENT LONG
19 ENOUGH. THERE'S AN IMPORTANT PIECE OF
20 INFORMATION -- THAT'S AN IMPORTANT PIECE OF
21 INFORMATION, BUT TAKEN ALONE, IT DOESN'T
22 PROVE A THING ABOUT THE OCCURRENCE OF LUNG
23 CANCER IN HUMAN BEINGS. IT HAS TO BE
24 WEIGHED TOGETHER WITH OTHER EVIDENCE, AND WE
25 ARE STILL COLLECTING INFORMATION.

26
27 SO PART OF MY HYPOTHETICAL, I -- I WANT YOU TO
28 ASSUME THAT DR. HAMMOND, WORLD-CLASS SCIENTIST AND RESEARCHER
7119
1 OF LUNG CANCERS, SAID THAT IN 1954 AFTER THE FRANK STATEMENT
2 CAME OUT IN THE NEWSPAPER.

3 OKAY?
4 A. OKAY.
5 Q. YOU GOT THAT?
6 YOUR HONOR, I NEED A NUMBER FOR THIS ONE.
7 THE COURT: OKAY. THE NEXT ONE UP IS GOING TO BE
8 174.

9 AND WHAT, PRAY TELL, IS 174?
10 MR. GARDNER: 174 IS AN ARTICLE, AN EDITORIAL IN THE
11 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION DATED
12 DECEMBER 12, 1959.

13 THE COURT: THANK YOU.

14
15 (I.D. 174 - 12-12-59 JAMA EDITORIAL)

16
17 MR. PIUZE: YOUR HONOR, AGAIN, I'D OBJECT TO THE
18 WITNESS BEING CROSS-EXAMINED ON ANY DOCUMENT HE HASN'T READ,
19 RELIED ON, REVIEWED UPON, AND I DON'T THINK IT'S -- THE
20 ARTICLE'S NECESSARY FOR A HYPOTHETICAL.

21 THE COURT: LET ME SEE THE ARTICLE, PLEASE, JUST FOR

22 A SECOND.
23 MR. GARDNER: ABSOLUTELY, YOUR HONOR.
24 THE COURT: MR. PIUZE, SOMEBODY CITED TO ME THIS
25 MORNING EVIDENCE CODE 1331. I'M GOING TO ALLOW THAT UNDER
26 THAT SECTION, NUMBER ONE.
27 AND NUMBER TWO, THIS IS CROSS-EXAMINATION.
28 AND NUMBER THREE, IT -- I'LL LEAVE IT LIKE
7120
1 THAT.
2 YOUR OBJECTIONS ARE NOTED AND RESPECTFULLY
3 OVERRULED.
4 Q. BY MR. GARDNER: OKAY. DR. POLLAY, I WANT YOU
5 TO ASSUME THAT THE JOURNAL OF THE AMERICAN MEDICAL
6 ASSOCIATION IS A WELL-RESPECTED AND AUTHORITATIVE JOURNAL ON
7 HEALTH ISSUES IN THE UNITED STATES, AND IT WAS SO IN 1959.
8 CAN YOU ASSUME THAT FOR ME?
9 A. YES.
10 Q. AND I WANT YOU TO ASSUME THAT IN THE
11 DECEMBER 12, 1959 ISSUE, THERE WAS AN EDITORIAL ON -- LET'S
12 LOOK AT IT -- SMOKING AND LUNG CANCER.
13 OKAY?
14 A. YES.
15 Q. AND I WANT YOU TO ASSUME THAT THE EDITORS OF
16 THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION IN DECEMBER
17 OF 1959 WERE EXPERTS IN THE AREA OF HEALTH ISSUES. OKAY.
18 HAVE YOU GOT THAT?
19 A. OKAY.
20 Q. AND I WANT YOU TO ASSUME THAT THE FOLLOWING
21 ARTICLE -- EXCUSE ME -- EDITORIAL APPEARED IN THE DECEMBER
22 1959 ISSUE OF THE JOURNAL OF THE AMERICAN MEDICAL
23 ASSOCIATION, WHICH WAS AFTER SURGEON GENERAL BURNEY PUBLISHED
24 HIS STATEMENT IN THE SAME JOURNAL. OKAY.
25 YOU GOT THAT?
26 A. YES.
27 Q. OKAY. AND I WANT YOU TO ASSUME THAT THE
28 ARTICLE IS ENTITLED -- EXCUSE ME -- THE EDITORIAL IS
7121
1 ENTITLED, "SMOKING AND LUNG CANCER."
2 YOU GOT THAT?
3 A. YES.
4 Q. ALL RIGHT. AND I WANT YOU TO ASSUME THAT THE
5 EDITOR OF THE JOURNAL OF AMERICAN MEDICAL ASSOCIATION SAID
6 THE FOLLOWING (READING):
7
8 A NUMBER OF AUTHORITIES
9 WHO HAVE EXAMINED THE SAME EVIDENCE CITED BY
10 DR. BURNEY DO NOT AGREE WITH HIS
11 CONCLUSIONS.
12
13 AND I WANT YOU TO ASSUME THAT'S THE SAME
14 DR. BURNEY THAT PUBLISHED A YEAR OR TWO BEFORE, RIGHT?
15 A. YES.
16 Q. IN THE SAME JOURNAL?
17 A. YES.
18 Q. OKAY?
19 A. THE SURGEON GENERAL, YES.
20 Q. I WANT YOU TO UNDERSTAND THAT THE EDITOR OF THE
21 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION IS SAYING THAT A
22 NUMBER OF AUTHORITIES WHO HAVE EXAMINED THE SAME EVIDENCE AS
23 DR. BURNEY DISAGREE WITH HIS CONCLUSIONS.
24 YOU GOT THAT SO FAR?
25 A. JUST A CLARIFICATION NEEDED. SOMETIMES YOU
26 REFER TO EDITORS, PLURAL, AND SOMETIMES EDITOR, ONE, AND IT

27 SEEMS TO BE AN INDIVIDUAL HERE.
28 DO YOU KNOW WE KNOW WHO JHT IS?
7122

1 Q. IT'S MY HYPOTHETICAL AND YOU'RE GOING TO ASSUME
2 THE FACTS AS I LAY THEM OUT.
3 A. SINGULAR OR PLURAL.
4 Q. IF I'M USING BOTH, I APOLOGIZE.
5 HOW ABOUT EDITOR?
6 HOW THAT ABOUT? THE EDITOR OF THE JOURNAL OF
7 THE AMERICAN MEDICAL ASSOCIATION.
8 FAIR ENOUGH?
9 A. OKAY.
10 Q. ALL RIGHT.
11 THE EDITOR WENT ON TO SAY (READING):
12
13 ALTHOUGH THE STUDIES REVEAL A
14 RELATIONSHIP BETWEEN CIGARETTE SMOKING AND
15 CANCER THAT SEEMS MORE THAN COINCIDENTAL,
16 THEY DO NOT EXPLAIN WHY, EVEN WHEN SMOKING
17 PATTERNS ARE THE SAME, CASE RATES ARE HIGHER
18 AMONG MEN THAN AMONG WOMEN AND AMONG URBAN
19 THAN AMONG RURAL POPULATIONS.
20
21 YOU GOT THAT SO FAR?
22 A. YES.
23 Q. (READING:)
24
25 NEITHER THE PROPONENTS NOR THE
26 OPPONENTS OF THE SMOKING THEORY HAVE
27 SUFFICIENT EVIDENCE TO WARRANT THE
28 ASSUMPTION OF AN ALL OR NONE AUTHORITATIVE
7123

1 PROPOSITION.
2
3 STILL WITH ME?
4 A. YES. YOU MIGHT BE MISREADING THAT, BUT I'M
5 WITH YOU.
6 Q. SHALL I GO BACK AND READ IT AGAIN?
7 WAS IT SO SLIGHT IT DIDN'T MATTER?
8 A. YEP.
9 Q. OKAY.
10 (READING:)
11
12 UNTIL DEFINITIVE STUDIES ARE
13 FORTHCOMING, THE PHYSICIAN --
14
15 AND I WANT YOU TO ASSUME THIS IS ADVICE GIVEN
16 BY THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION TO
17 PRACTICING PHYSICIANS IN AMERICA IN 1959.
18 YOU GOT THAT?
19 A. YEP.
20 Q. (READING:)
21
22 UNTIL DEFINITIVE STUDIES ARE
23 FORTHCOMING, THE PHYSICIAN CAN FULFILL HIS
24 RESPONSIBILITY BY WATCHING THE SITUATION
25 CLOSELY, KEEP CURRENT OF THE FACTS AND
26 ADVISING HIS PATIENTS ON THE BASIS OF HIS
27 APPRAISAL OF THOSE FACTS.
28
7124

1 OKAY. SO I WANT YOU TO ASSUME THAT THE EDITOR
2 OF THE AMERICAN MEDICAL ASSOCIATION IS ADVISING PHYSICIANS IN

3 1959, AFTER DR. BURNEY'S ARTICLE CAME OUT, THAT THE FACTS
4 AREN'T CONCLUSIVE AND THAT THEY SHOULD JUDGE THE FACTS AND
5 ADVISE THEIR PATIENTS USING THEIR OWN MEDICAL JUDGMENT.

6 OKAY?

7 A. YES.

8 Q. ALL RIGHT.

9 (READING:)

10
11 THE PUBLIC HEALTH SERVICE
12 CAN BEST MEET ITS OBLIGATIONS BY COLLECTING
13 AND DISSEMINATING DATA FROM ALL SOURCES AND
14 MAKING KNOWN TO THE HEALTH AND MEDICAL
15 PROFESSIONS ITS OWN EVALUATIONS OF SUCH
16 DATA.

17
18 YOU GOT THAT?

19 A. YES.

20 Q. I WANT YOU TO ASSUME THAT ALL OF THAT ARTICLE
21 THAT WE JUST READ CAME FROM THE JOURNAL OF THE AMERICAN
22 MEDICAL ASSOCIATION IN 1959 AFTER DR. BURNEY'S STATEMENT CAME
23 OUT.

24 OKAY?

25 A. YES.

26 Q. ALL RIGHT. I TOLD YOU WE'D TALK ABOUT
27 DR. DOLL, SIR RICHARD DOLL. AND I WANT YOU TO ASSUME THAT
28 THIS WAS A BOOK FROM 1960.

7125
1 CAN I GET TO A NUMBER, YOUR HONOR, THE NEXT
2 NUMBER?

3 THE COURT: SURE. THE NEXT NUMBER UP IS 175.

4 MR. GARDNER: 175.

5 THE COURT: AND THIS IS DR. DOLL'S BOOK?

6 MR. GARDNER: NO, YOUR HONOR.

7 THE COURT: I'M SORRY. I MISUNDERSTOOD YOU.

8 MR. GARDNER: THAT'S OKAY. I WASN'T CLEAR.

9 DR. DOLL --

10 THE COURT: THE FOREWORD.

11 MR. GARDNER: YES, YOUR HONOR.

12 THE COURT: THE BOOK IS CALLED "SMOKING."

13 MR. GARDNER: "THE INFLUENCE ON THE INDIVIDUAL AND
14 ITS ROLE IN SOCIAL MEDICINE."
15 HERE, JUST TO SHOW YOU.

16
17 (I.D. 175 - FORWARD BY DR. DOLL)

18
19 Q. BY MR. GARDNER: I WANT YOU TO ASSUME THAT THE
20 DATE OF PUBLICATION WAS 1960.

21 OKAY?

22 A. YES.

23 Q. AND I WANT YOU TO ASSUME THAT SIR RICHARD DOLL,
24 NOT ONLY A WELL-RESPECTED AUTHORITY IN THIS AREA, BUT HE
25 LIVED AND WAS RESEARCHING DURING THIS TIME, OKAY, 1960.

26 YOU GOT THAT?

27 A. YES.

28 Q. HE'S AN EPIDEMIOLOGIST.

7126
1 I WANT YOU TO ASSUME THAT. OKAY?
2 A. YES.
3 Q. ALL RIGHT. AND I WANT YOU TO ASSUME -- I WANT
4 YOU TO ASSUME --

5 I CAN'T MAKE THIS FOCUS --

6 THE COURT: WE'LL ALL ASSUME THAT.

7 MR. GARDNER: THANK YOU, YOUR HONOR.

8 THE COURT: FOR BOTH OF YOU.
9 Q. BY MR. GARDNER: I WANT YOU TO ASSUME THAT
10 DR. DOLL SAID THE FOLLOWING IN 1960. OKAY.
11 (READING:)
12
13 ALTERNATIVE EXPLANATIONS --
14
15 AND I WANT YOU TO ASSUME THAT'S ALTERNATIVE
16 EXPLANATIONS FOR THE SMOKING THEORY.
17
18 -- HAVE, IN FACT, BEEN PUT FORWARD,
19 AND THOUGH SOME OF THEM MAY APPEAR TO BE
20 RATHER IMPLAUSIBLE, THERE ARE EXPERIENCED
21 SCIENTISTS WHO REGARD THEM AS
22 PLAUSIBLE -- AS MORE PLAUSIBLE --
23
24 THE COURT: AS MORE PLAUSIBLE.
25 MR. GARDNER: THANK YOU, YOUR HONOR. I CAN'T READ.
26 LET ME TRY THAT.
27
28 ALTERNATIVE EXPLANATIONS HAVE,
7127
1 IN FACT, BEEN PUT FORWARD, AND THOUGH SOME
2 OF THEM MAY APPEAR TO BE RATHER IMPLAUSIBLE,
3 THERE ARE EXPERIENCED SCIENTISTS WHO REGARD
4 THEM AS MORE PLAUSIBLE THAN THE SUGGESTION
5 THAT SMOKING IS A CAUSE OF DISEASE.
6
7 Q. HAVE YOU GOT THAT PIECE?
8 A. YEP.
9 Q. I WANT YOU TO ASSUME THAT SIR RICHARD DOLL SAID
10 THAT THERE ARE EXPERIENCED SCIENTISTS IN 1960 WHO REGARD
11 OTHER EXPLANATIONS OF THE CAUSE OF LUNG CANCER MORE PLAUSIBLE
12 THAN SMOKING.
13 OKAY?
14 A. YES.
15 Q. ALL RIGHT.
16 MR. GARDNER: YOUR HONOR, LET'S SEE WHAT THE NEXT
17 NUMBER IS.
18 THE COURT: 176.
19 MR. GARDNER: THANK YOU.
20 THE COURT: AND THAT'S GOING TO BE A WHAT?
21 MR. GARDNER: THAT'S GOING TO BE A FEBRUARY 1962
22 ARTICLE AUTHORED BY DR. LEWIS C. ROBBINS, M.D.
23 THE COURT: OKAY.
24
25 (I.D. 176- 2-62 ROBBINS ARTICLE)
26
27 MR. PIUZE: SO I'D AGAIN SAY THAT, WITHOUT
28 ESTABLISHING THAT THIS EXPERT HAS READ, REVIEWED AND/OR
7128
1 RELIED UPON THIS, I'D OBJECT TO HIM BEING CROSS-EXAMINED ON
2 IT.
3 THE COURT: ALL RIGHT. YOUR OBJECTION IS NOTED AND
4 RESPECTFULLY OVERRULED.
5 NEXT. GO ON, PLEASE.
6 MR. GARDNER: I'M SORRY, YOUR HONOR.
7 THE COURT: GO ON.
8 Q. BY MR. GARDNER: I WANT YOU TO ASSUME THAT
9 LEWIS C. ROBBINS, M.D., WAS A DIRECTOR AT THE NATIONAL CANCER
10 INSTITUTE IN FEBRUARY OF 1962.
11 YOU GOT THAT?
12 A. OKAY.

13 Q. AND I WANT YOU TO ASSUME THAT IN 1962, THE
14 NATIONAL CANCER INSTITUTE WAS PART OF THE PUBLIC HEALTH
15 SERVICE HERE IN THE UNITED STATES.
16 OKAY?
17 A. OKAY.
18 Q. OKAY. I WANT YOU TO ASSUME THAT DR. ROBBINS IN
19 THIS ARTICLE ADDRESSED DR. BURNEY'S ARTICLE SOMETIME EARLIER
20 THAT APPEARED IN THE JOURNAL OF THE AMERICAN MEDICAL
21 ASSOCIATION.
22 OKAY?
23 A. YES.
24 Q. I WANT YOU TO ASSUME THAT THAT'S THE SAME
25 ARTICLE THAT MR. PIUZE TALKED ABOUT WHEN HE WAS GIVING YOU
26 HIS HYPOTHETICAL.
27 OKAY?
28 A. OKAY.
7129
1 Q. AND I WANT YOU TO ASSUME THAT DR. ROBBINS, A
2 DIRECTOR AT THE NATIONAL CANCER INSTITUTE SAID THE FOLLOWING
3 (READING):
4
5 DR. BURNEY'S FINAL CONCLUSION
6 WAS MADE AS A PUBLIC HEALTH PRACTITIONER AND
7 NOT AS A MEDICAL INVESTIGATOR.
8
9 OKAY?
10 A. RIGHT.
11 Q. AND I WANT YOU TO ASSUME THAT (READING:)
12
13 "WERE HE
14 SPEAKING" -- DR. BURNEY -- "SPEAKING FROM
15 THE RESPONSIBILITY OF A MEDICAL
16 INVESTIGATOR, THE CONCLUSION WOULD HAVE
17 DEALT WITH THE ADEQUACIES OR INADEQUACIES OF
18 RESEARCH DESIGNS AND WITH THE UNRESOLVED
19 QUESTIONS THAT NEED ANSWERING."
20
21 HAVE YOU GOT THAT?
22 A. OKAY.
23 Q. OKAY. AND I WANT YOU TO ASSUME FOR ME THAT IN
24 THIS PAPER, DR. ROBBINS FROM THE NATIONAL CANCER INSTITUTE IN
25 1962, AS PART OF HIS CONCLUSION, SAID THE FOLLOWING
26 (READING):
27
28 FOR THE MEDICAL INVESTIGATOR, HOWEVER,
7130
1 THE EVIDENCE --
2
3 AND THAT'S THE EVIDENCE LINKING SMOKING AND
4 LUNG CANCER IN 1962.
5
6 -- STILL DOES NOT ADD UP
7 TO CONCLUSIVE PROOF THAT CIGARETTE SMOKING
8 CAUSES LUNG CANCER.
9
10 HAVE YOU GOT THAT?
11 A. YEP.
12 Q. DR. ROBBINS, NATIONAL CANCER INSTITUTE, 1962 --
13 THE COURT: YOU DON'T NEED TO REPEAT IT AGAIN. WE'VE
14 GOT IT.
15 MR. GARDNER: YES, YOUR HONOR.
16 YOUR HONOR, THE NEXT NUMBER IS?
17 THE COURT: 177.

18 MR. GARDNER: OKAY. 177, YOUR HONOR, IS AN EXCERPT
19 OUT OF THE 1964 SURGEON GENERAL'S REPORT.
20 THE COURT: ALL RIGHT. EXCERPT FROM 1964 SURGEON
21 GENERAL REPORT IS 177.
22
23 (I.D. 177 - EXCERPT FROM SURGEON
24 GENERAL REPORT, BLOWUP)
25
26 Q. BY MR. GARDNER: DR. POLLAY, CAN YOU SEE THIS
27 FROM THERE?
28 A. YES.
7131
1 Q. OKAY. I WANT YOU TO ASSUME THAT THE SURGEON
2 GENERAL OF THE UNITED STATES IS THE SUPREME MEDICAL AUTHORITY
3 PUBLIC HEALTH AUTHORITY IN 1964. OKAY.
4 CAN YOU DO THAT?
5 A. YES.
6 Q. OKAY. AND I WANT YOU TO ASSUME THAT THIS CAME
7 FROM THE FIRST FEW PAGES OF THE 1964 SURGEON GENERAL'S
8 REPORT.
9 ALL RIGHT?
10 A. YES.
11 Q. I WANT YOU TO ASSUME THAT THE SURGEON GENERAL'S
12 COMMITTEE AND WHAT IS COMMONLY REFERRED TO AS THE 1964
13 SURGEON GENERAL'S REPORT SAID THE FOLLOWING (READING):
14
15 FEW MEDICAL QUESTIONS HAVE
16 STIRRED SUCH PUBLIC INTEREST OR CREATED MORE
17 SCIENTIFIC DEBATE THAN THE TOBACCO-HEALTH
18 CONTROVERSY.
19
20 I WANT YOU TO ASSUME THAT THOSE ARE THE WORDS
21 OF THE SURGEON GENERAL'S COMMITTEE IN 1964.
22 OKAY?
23 A. OKAY.
24 Q. (READING:)
25
26 THE INTERRELATIONSHIPS OF
27 SMOKING AND HEALTH UNDOUBTEDLY ARE COMPLEX.
28 THE SUBJECT --
7132
1
2 OF SMOKING AND HEALTH.
3
4 -- DOES NOT LEND ITSELF TO EASY
5 ANSWERS.
6
7 OKAY. I WANT YOU TO ASSUME THAT WAS ALL IN THE
8 1964 SURGEON GENERAL'S REPORT.
9 ALL RIGHT?
10 A. OKAY.
11 Q. OKAY. AND THEN CAN YOU SEE THE BOTTOM PART
12 HERE?
13 A. I CAN NOW, YEAH.
14 Q. MAYBE IF I -- WHY DON'T WE TRY THIS (READING:)
15
16 STATISTICAL METHODS CANNOT
17 ESTABLISH PROOF OF CAUSAL RELATIONSHIP IN AN
18 ASSOCIATION.
19
20 I WANT YOU TO ASSUME THAT THAT'S FROM THE
21 SURGEON GENERAL'S REPORT IN 1964.
22 OKAY?

23 A. RIGHT.
24 Q. (READING):
25
26 THE CAUSAL SIGNIFICANCE OF AN
27 ASSOCIATION IS A MATTER OF JUDGMENT WHICH
28 GOES BEYOND ANY STATEMENT OF STATISTICAL
7133
1 PROBABILITY.
2
3 OKAY. GOT THAT?
4 A. YEP.
5 Q. OKAY.
6 (READING):
7
8 TO JUDGE OR EVALUATE THE CAUSAL
9 SIGNIFICANCE OF THE ASSOCIATION BETWEEN THE
10 ATTRIBUTE OR AGENT AND THE DISEASE, OR
11 EFFECT UPON HEALTH, A NUMBER OF CRITERIA
12 MUST BE UTILIZED, NO ONE OF WHICH IS AN
13 ALL-SUFFICIENT BASIS FOR JUDGMENT.
14
15 OKAY. SO I WANT YOU TO ASSUME THIS: 1964, THE
16 SURGEON GENERAL'S REPORT USED STATISTICS, STATISTICAL
17 EPIDEMIOLOGICAL EVIDENCE FOR THE FIRST TIME IN THE UNITED
18 STATES TO DECIDE THAT THERE WAS AN ASSOCIATION, A CAUSAL
19 ASSOCIATION, BETWEEN SMOKING AND LUNG CANCER.
20 OKAY?
21 A. OKAY.
22 Q. ALL RIGHT. AND I WANT YOU TO ASSUME THAT
23 EVEN AFTER 1964, AFTER THE SURGEON GENERAL'S REPORT CAME
24 OUT --
25 YOUR HONOR, CAN I GET THE NEXT NUMBER, PLEASE?
26 THE COURT: SURE. IT'S GOING TO BE 178.
27 MR. GARDNER: 178.
28 Q. I WANT YOU TO ASSUME THAT THERE WERE RESPECTED
7134
1 PHYSICIANS --
2 THE COURT: WHAT IS IT? I DON'T KNOW WHAT THIS IS.
3 MR. GARDNER: I'M SORRY, YOUR HONOR. YOU'RE RIGHT.
4 I JUMPED THE GUN.
5 LIFE MAGAZINE, JANUARY 24, 1964.
6 THE COURT: THANK YOU. THAT'S 178.
7
8 (I.D. 178 - 1-24-64 LIFE MAGAZINE)
9
10 Q. BY MR. GARDNER: I WANT YOU TO ASSUME FOR THE
11 PURPOSES OF THIS HYPOTHETICAL THAT ONE SUCH CRITIC OF THE
12 SURGEON GENERAL'S DECISION OR JUDGMENT THAT THERE WAS A
13 STATISTICAL ASSOCIATION BETWEEN SMOKING AND LUNG CANCER WAS A
14 DR. JOSEPH BERKSON OF THE MAYO CLINIC.
15 CAN YOU DO THAT?
16 A. I CAN.
17 Q. AND I WANT YOU TO ASSUME THAT THE MAYO CLINIC
18 IS A WORLD-RENOWNED GROUP OF PHYSICIANS SOMEWHERE IN
19 MINNESOTA -- ROCHESTER, I BELIEVE.
20 OKAY?
21 A. OKAY.
22 Q. AND I WANT YOU TO ASSUME THAT AFTER THE SURGEON
23 GENERAL'S REPORT CAME OUT, THAT DR. BERKSON AND OTHERS STILL
24 BELIEVED THAT (READING):
25
26 THE REPORT AND ITS
27 CONCLUSIONS WERE STILL WORTHY OF BEING

28 CHALLENGED BY SCIENTISTS AS EMINENT AS ANY
7135
1 OF THE SURGEON GENERAL'S COMMITTEE.
2
3 OKAY. CAN YOU ASSUME THAT FOR ME?
4 A. YES.
5 Q. OKAY. AND I WANT YOU TO ASSUME FOR ME THAT IN
6 1966, EVERY PACKAGE OF CIGARETTES PRODUCED OR MARKETED IN THE
7 UNITED STATES HAD A WARNING THAT WARNED SMOKERS ABOUT THE
8 HEALTH EFFECTS ASSOCIATED WITH SMOKING.
9 CAN YOU ASSUME THAT?
10 A. YES. IT'S A BIT -- OKAY.
11 Q. DO YOU WANT TO SEE IT?
12 A. IT'S YOUR -- YES.
13 Q. JUST ASSUME IT FOR ME.
14 A. OKAY.
15 Q. OKAY. WE'VE ALL SEEN IT ENOUGH.
16 AND I WANT YOU TO ASSUME THAT IN 1969, THE
17 WARNING GOT STRONGER.
18 OKAY?
19 A. OKAY.
20 Q. AND I WANT YOU TO ASSUME THAT IN 1972, THE
21 WARNINGS WENT ON EVERY ADVERTISEMENT.
22 OKAY?
23 A. ALL RIGHT.
24 Q. BASED ON ALL OF THAT, YOU GOT ALL THAT IN MIND,
25 STILL, RIGHT?
26 I KNOW IT WAS A LOT.
27 A. YEAH. I'VE BEEN TAKING NOTES.
28 Q. OKAY. BASED ON ALL OF THAT, I WANT TO ASK YOU
7136
1 WHETHER, IN LIGHT OF ALL OF THAT MEDICAL EVIDENCE THAT I HAD
2 IN MY HYPOTHETICAL, THE ADVERTISEMENTS THAT WE LOOKED AT WERE
3 MISLEADING, THEY WEREN'T, IN LIGHT OF MY HYPOTHETICAL
4 EVIDENCE, WERE THEY?
5 A. NO. I BELIEVE THE ADS ARE MISLEADING.
6 Q. YOU TOLD ME YOU'D ACCEPT MY HYPOTHETICAL FACTS
7 JUST LIKE YOU WOULD FOR --
8 A. I DO.
9 Q. -- MR. PIUZE.
10 A. AND I ACCEPT THAT THERE MAY HAVE BEEN SOME
11 CONTROVERSY THAT THERE WERE SOME SCIENTISTS DISAGREEING WITH
12 THE SURGEON GENERAL'S PANEL.
13 Q. DR. POLLAY, YOU TOLD ME YOU'D ACCEPT THE FACTS
14 AS I LAID THEM OUT, DIDN'T YOU?
15 A. I DID.
16 Q. OKAY. AND IT'S THE PRECISE OPPOSITE OF THESE
17 FACTS THAT MR. PIUZE LAID OUT FOR YOU IN HIS HYPOTHETICAL,
18 RIGHT?
19 AM I RIGHT?
20 A. WELL, I'M NOT -- I'M NOT SURE WHAT THE
21 OPPOSITION IS, YOU SEE. BUT THE -- BUT I UNDERSTAND THAT
22 THERE WERE DISSENTERS. THERE WERE PEOPLE THAT DISAGREED WITH
23 THE SURGEON GENERAL'S REPORT.
24 Q. SURE. PEOPLE AS EMINENT AS THE PEOPLE ON THE
25 SURGEON GENERAL'S COMMITTEE WE JUST READ, AND I JUST ASKED
26 YOU TO ASSUME THAT, DIDN'T I?
27 DIDN'T I?
28 A. YES.
7137
1 Q. OKAY. IN LIGHT OF ALL OF THOSE FACTS IN MY
2 HYPOTHETICAL, WHICH YOU SAID YOU'D ACCEPT JUST LIKE YOU DID
3 MR. PIUZE'S, IN LIGHT OF THE MEDICAL EVIDENCE AND THE

4 WARNINGS AND EVERYTHING ELSE AS I JUST LAID IT OUT, THERE'S
5 NOTHING MISLEADING ABOUT THOSE ADS, IS THERE?
6 A. WELL, THERE IS, IN MY OPINION.
7 Q. IT'S ALL RIGHT.
8 ON THE BREAK, EARLIER THIS MORNING, YOU AND I
9 HAD A LITTLE DISCUSSION ABOUT THE GAME OF TESTIFYING AND
10 ANSWERING QUESTIONS, DIDN'T WE?
11 YOU MADE A COMMENT LIKE THAT, RIGHT?
12 A. I DON'T RECALL.
13 Q. STANDING RIGHT HERE. YOU DON'T RECALL THAT?
14 OKAY. FINE.
15 THE COURT: MR. GARDNER.
16 MR. GARDNER: YES, YOUR HONOR.
17 THE COURT: DO ME A FAVOR. YOU HAVE LITTLE ASIDES OF
18 COMMENTS THAT YOU MAKE AFTER THE WITNESS SAYS SOMETHING.
19 PLEASE STOP IT.
20 MR. GARDNER: I WILL, YOUR HONOR.
21 THE COURT: I DON'T THINK YOU'RE CONSCIOUS OF IT, BUT
22 PLEASE STOP IT.
23 MR. GARDNER: OKAY.
24 Q. I WANT TO CHANGE SUBJECTS NOW, DR. POLLAY.
25 OKAY?
26 A. OKAY.
27 Q. I WANT TO LOOK AT SOME ADVERTISEMENTS AND ASK
28 YOU SOME QUESTIONS ABOUT THEM.

7138

1 ALL RIGHT?
2 A. OKAY.
3 Q. THESE AREN'T CIGARETTE ADVERTISEMENTS.
4 THE FIRST ONE I'D LIKE TO SHOW YOU --
5 THE COURT: AND THIS IS GOING TO BE NO. 179.
6 MR. GARDNER: 179, YOUR HONOR.
7 THE COURT: HAS MR. PIUZE SEEN THIS YET?
8 MR. GARDNER: NO, HE HASN'T, YOUR HONOR.
9 THE COURT: OKAY. I KNOW THIS IS CROSS-EXAMINATION,
10 BUT I DO NEED TO HAVE HIM AT LEAST LOOK AT WHATEVER IT IS
11 BEFORE YOU PUT IT UP ON THE SCREEN IN CASE THERE'S AN
12 OBJECTION.
13 MR. GARDNER: OKAY.
14 THE COURT: AND WHILE THEY CHART HOW THEY'RE GOING TO
15 GO ABOUT DOING THAT.

16

17 (SHORT PAUSE.)

18

19 THE COURT: READY TO GO?
20 MR. GARDNER: I AM, YOUR HONOR.
21 THE COURT: OKAY. GO AHEAD.
22 I'M SORRY. 179, WE WERE GOING TO CALL
23 SOMETHING HERE, AND I DON'T HAVE A DESCRIPTION.
24 MR. GARDNER: IT'S AN ADVERTISEMENT FROM MC DONALD'S,
25 YOUR HONOR.
26 THE COURT: AN AD FOR MC DONALD'S. 179.

27

28 (I.D. 179 - AD FOR MC DONALD'S VIDEO)

7139

1 (VIDEOTAPE, EXHIBIT 179, WAS PLAYED
2 AND NOT REPORTED.)

3

4 THE COURT: EXCUSE ME.
5 MS. REPORTER, I KNOW YOU WEREN'T AWARE OF THIS,
6 BUT YOU'RE GOING TO HAVE TO TAKE DOWN ALL ADVERTISEMENTS.
7 THERE ARE NO TRANSCRIPTS OF ANY OF THESE ADS, AND THE
8 APPELLATE RULES REQUIRE A TRANSCRIPT.

9 I'M NOT TRYING TO ADD UNDUE EMPHASIS OF THIS,
10 FOLKS. I SIMPLY NEED TO MAKE SURE THE RECORD IS CLEAR.
11 SO CAN YOU HAVE IT RERUN?
12 THANKS.

13
14 (VIDEOTAPE, EXHIBIT 179, WAS PLAYED
15 AND REPORTED AS FOLLOWS:)

16
17 THE FANS ARE RAVING.
18 THIS ONE IS GOING TO BE LEGENDARY.
19 WHEN YOU'RE THE NEXT BIG THING,
20 EVERYBODY WANTS YOU.
21 EVEN KOBE BRYANT IS DOING THE NEXT BIG
22 THING FROM MC DONALD'S.
23 IT'S THE BIG AND TASTY.
24 WE LOVE TO SEE YOU SMILE.

25
26 THE COURT: THANK YOU.

27 Q. BY MR. GARDNER: OKAY, DR. POLLAY, I JUST HAVE
28 A COUPLE OF QUESTIONS ABOUT THAT.

7140

1 ON DIRECT EARLIER TODAY, YOU WERE TALKING ABOUT
2 FRIENDLY FAMILIARITY.
3 YOU REMEMBER THAT?
4 A. RIGHT.
5 Q. YOU'D AGREE WITH ME, WOULDN'T YOU, THAT MOST
6 AMERICANS HAVE A FRIENDLY FAMILIARITY WITH MC DONALD'S?
7 A. YES.
8 Q. THEY'VE HAD A LOT OF FAMOUS COMMERCIALS OVER
9 THE YEARS, RIGHT?
10 A. YES.
11 Q. THAT ONE WAS EVEN BY A FAMOUS SPORTS HERO,
12 LOCAL SPORTS HERO, RIGHT?
13 A. RIGHT.
14 Q. YOU DESERVE A BREAK TODAY. I'D SING IT, BUT MY
15 VOICE IS REALLY BAD.
16 THAT'S A FAMILIAR JINGLE THAT'S ASSOCIATED WITH
17 MC DONALD'S, RIGHT?
18 A. YES.
19 Q. THE GOLDEN ARCHES, THAT HAS SPECIAL MEANING IN
20 OUR COUNTRY, DOES IT NOT?
21 A. YES.
22 Q. OKAY. THOSE ARE SOME OF THE THINGS THAT YOU
23 WERE TALKING ABOUT ON DIRECT, RIGHT, FRIENDLY FAMILIARITY,
24 USING SPORT STARS TO HAWK YOUR PRODUCTS, RIGHT?
25 A. YES.
26 Q. OKAY. AND I WANT YOU TO ASSUME THAT THERE ARE
27 MEDICAL AUTHORITIES IN THIS COUNTRY THAT ARE SAYING, FAST
28 FOOD, BAD FOR YOU, CAN LEAD TO MANY DISEASES, LIKE HEART

7141

1 DISEASE, DIABETES, STROKE. OKAY.
2 YOU'VE HEARD THAT, HAVEN'T YOU?
3 A. I'VE HEARD SOME OF THAT.
4 SO YOU'RE ASKING ME TO ASSUME -- LET ME JUST
5 GET THE LIST -- HEART DISEASE, STROKE, DIABETES --
6 Q. DIABETES.
7 AND I WANT YOU TO ASSUME THAT THE STATE OF
8 CALIFORNIA BELIEVES THAT ABOUT 35,000 OF ITS CITIZENS DIE
9 EACH YEAR FROM DISEASES CAUSED BY THINGS LIKE MCDONALD'S FAST
10 FOOD. OKAY. OBESITY-RELATED DISEASES.
11 NOW, ISN'T THIS AD THAT WE JUST SAW SUBJECT TO
12 MANY OF THE COMPLAINTS THAT YOU LAID OUT ON DIRECT WITH
13 MR. PIUZE -- THERE WAS A FAMOUS SPORTS FIGURE WHO USED TO

14 SELL MC DONALD'S, RIGHT?
15 A. YES.
16 Q. RIGHT. IT WAS KIND OF WHIMSICAL, RIGHT?
17 HE MISSED THE SHOT?
18 A. YEP. YEP.
19 Q. EVERYBODY'S GOTTEN -- EVERYBODY -- MANY, MANY
20 PEOPLE, VERY FRIENDLY FAMILIARITY WITH MC DONALD'S, RIGHT?
21 A. YEP.
22 Q. GOLDEN ARCHES. WE TALKED ABOUT THAT.
23 SO ISN'T THAT AD THAT WE JUST SAW, WHICH I'VE
24 ASKED YOU TO ASSUME KILLS SOMEWHERE IN THE NEIGHBORHOOD OF
25 35,000 CALIFORNIANS A YEAR, ISN'T IT SUBJECT TO THE SAME
26 CRITICISMS THAT YOU HAD FOR THE ADS ON DIRECT WITH MR. PIUZE?
27 A. I -- A CLARIFICATION. YOU'RE ASKING ME TO
28 ASSUME THAT MC DONALD'S KILLS 35,000 A YEAR?

7142

1 Q. SOME PEOPLE ARE SUING MC DONALD'S RIGHT NOW,
2 CLAIMING THAT VERY THING.
3 YOU'RE AWARE OF THAT, AREN'T YOU, DR. POLLAY?
4 A. NO.
5 Q. YOU HAVEN'T HEARD ANYTHING ABOUT THE LAWSUITS
6 AGAINST MC DONALD'S?
7 A. I'VE HEARD -- I DIDN'T KNOW THAT ANY WERE
8 FILED. I'VE HEARD TALK THAT THERE WERE SIMILAR ISSUES.
9 Q. THEY ARE SIMILAR ISSUES, WEREN'T THEY?
10 A. YES.
11 Q. IN FACT, HAS ANYBODY TALKED TO YOU AND ASKED
12 YOU IF YOU'D BE WILLING TO LOOK AT THE ISSUE AND TESTIFY
13 ABOUT IT IN THOSE CASES?
14 A. NO.
15 Q. OKAY.
16 THE COURT: DO YOU NEED ANOTHER NUMBER?
17 MR. GARDNER: YES, YOUR HONOR.
18 THE COURT: 180. WHAT IS 180 GOING TO BE?
19 MR. GARDNER: IT'S GOING TO BE A BEER COMMERCIAL,
20 YOUR HONOR.
21 THE COURT: A BEER COMMERCIAL. IS THIS A VIDEO AS
22 WELL?
23 MR. GARDNER: IT IS, YOUR HONOR.
24 THE COURT: OKAY.
25 MS. REPORTER, YOU NEED TAKE IT DOWN.
26
27 (I.D. 180 - BEER COMMERCIAL VIDEO)
28

7143

1 THE COURT: AS BEST YOU CAN.
2
3 (VIDEOTAPE, EXHIBIT 180, WAS PLAYED
4 AND REPORTED AS FOLLOWS:)
5
6 HELLO.
7 YAHOO.
8 WAZUP?
9 NOTHING, BEE. JUST WATCHING
10 THE GAME. HAVING A BUD. HOW ABOUT YOU?
11 NOTHING. WATCHING THE GAME,
12 HAVING A BUD.
13 TRUE. TRUE.
14 WAZUP?
15 WAZUP?
16 WAZUP?
17 YO, PICK UP THE PHONE.
18 HELLO.

19 WAZUP?
20 WAZUP?
21 YEAH.
22 YEAH.
23 YO.
24 WHERE IS DUKEY?
25 YO, DUKEY.
26 YO.
27 WAZUP?
28 WAZUP?
7144
1 DAH.
2 DAH.
3 YEAH.
4 YEAH.
5 HOLD ON.
6 HELLO.
7 WAZUP?
8 YEAH.
9 YEAH.
10 YEAH.
11 YEAH.
12 YEAH.
13 YEAH.
14 YEAH.
15 YEAH.
16 YEAH.
17 SO WAZUP, BEE?
18 WATCHING THE GAME, HAVING A
19 BUD.
20 TRUE.
21 TRUE.
22
23 THE COURT: FOR THE SAKE OF THE REPORTER, THAT MAY
24 HAVE BEEN DIFFICULT TO TAKE DOWN FROM THE REPORTER'S
25 STANDPOINT, SO IF THE RECORD IS A BIT UNCLEAR, IT'S NOT THE
26 REPORTER'S FAULT.
27 MR. GARDNER: IF THIS HELPS, YOUR HONOR, I UNDERSTAND
28 IT'S SPELLED, W-A-Z-U-P. AT LEAST THAT'S WHAT I SAW.
7145
1 THE COURT: I DON'T KNOW HOW IT'S SPELLED. THANK
2 YOU.
3 AND, MS. REPORTER, I'M NOT IN ANY WAY
4 DENIGRATING YOUR SKILLS. YOU'RE GREAT. AND I KNOW IT. BUT
5 THAT'S HARD TO TAKE DOWN.
6 Q. BY MR. GARDNER: DR. POLLAY, THAT'S A FAIRLY
7 POPULAR AD THAT'S BEEN OUT IN THE LAST SEVERAL YEARS, ISN'T
8 IT?
9 A. YEAH. IT WAS. I DON'T THINK IT'S CURRENTLY
10 RUNNING, BUT --
11 Q. RIGHT. AND IT'S ADVERTISING BEER, RIGHT?
12 ALCOHOL?
13 A. YEP.
14 Q. AND ALCOHOL. YOU'D AGREE WITH ME, ALCOHOL'S
15 NOT A COMPLETELY SAFE PRODUCT, WOULDN'T YOU?
16 A. WHEN USED TO EXCESS, IT CAN CERTAINLY LEAD TO
17 PROBLEMS.
18 Q. SURE. IN FACT, I WANT YOU TO ASSUME THAT
19 ALCOHOL LEADS TO SOMEWHERE IN THE NEIGHBORHOOD OF 3500 TO
20 4,000 DEATHS IN THIS STATE EACH YEAR.
21 CAN YOU DO THAT FOR ME?
22 A. OKAY.
23 Q. AND THAT'S FROM DISEASES LIKE CIRRHOSIS OF THE

24 LIVER, LIVER CANCER, THINGS LIKE THAT.
25 OKAY?
26 A. OKAY.
27 Q. NOW, I WANT TO ASK YOU -- THAT AD WAS, TO USE
28 YOUR WORDS, WHIMSICAL, RIGHT?
7146
1 IT WAS FUNNY?
2 A. YEAH. IT'S A USER IMAGERY. IT'S LIFESTYLE.
3 Q. SURE. THERE WAS NOTHING IN THAT AD THAT
4 DENOTED THE DANGERS THAT SOMETIMES ARE ATTENDANT WITH THE
5 CONSUMPTION OF ALCOHOL, RIGHT?
6 A. THAT'S CORRECT. I MEAN, WITH ALCOHOL CONSUMED
7 IN EXCESS.
8 Q. SURE. THERE WAS NO FEDERALLY MANDATED WARNING
9 TELLING ABOUT CIRRHOSIS OF THE LIVER OR LIVER CANCER ON THAT
10 AD, RIGHT?
11 A. THAT'S CORRECT.
12 Q. AND THAT AD PLAYED ON TV JUST A FEW YEARS AGO,
13 RIGHT?
14 A. YES.
15 Q. ALL RIGHT. I WANT TO ASK YOU, IN LIGHT OF ALL
16 THAT, AND IN LIGHT OF EVERYTHING YOU TOLD MR. PIUZE THIS
17 MORNING, WOULD YOU SAY THAT THAT COMMERCIAL THAT WE JUST
18 WATCHED WAS MISLEADING?
19 A. I THINK IT WOULD BE JUDGED THAT WAY. IT
20 CERTAINLY COULD BE MORE INFORMATIVE.
21 Q. SO JUDGED BY THE SAME STANDARDS YOU WERE
22 JUDGING THE ADS THIS MORNING, YOU BELIEVE THAT BUDWEISER AD
23 THAT WE JUST SAW COULD BE VIEWED AS MISLEADING, RIGHT?
24 A. IT CERTAINLY COULD BE MORE INFORMATIVE, AND,
25 YOU KNOW, WERE THE PRODUCT AS DEADLY AND DANGEROUS AS
26 TOBACCO, I WOULD HAVE EXACTLY THE SAME OPINION.
27 MR. GARDNER: YOUR HONOR, I'M GOING TO MOVE TO
28 STRIKE.
7147
1 THE COURT: THE JURY WILL DISREGARD THE LAST PART OF
2 HIS ANSWER. IT'S NONRESPONSIVE.
3 MR. GARDNER: THANK YOU.
4 LET'S PLAY ONE MORE.
5 THE COURT: 181 IS YOUR NEXT NUMBER. WHAT'S 181
6 GOING TO BE?
7 MR. GARDNER: 181 IS A TACO BELL COMMERCIAL,
8 YOUR HONOR.
9 THE COURT: TACO BELL.
10 WE'RE GOING HAVE A SPEAKING DOG, ARE WE?
11 MR. GARDNER: YOU READ MY MIND, YOUR HONOR.
12 THE COURT: OKAY. 181, TACO BELL.
13
14 (I.D. 181 - TACO BELL COMMERCIAL VIDEO)
15
16 (VIDEOTAPE, EXHIBIT 181, WAS PLAYED
17 AND REPORTED AS FOLLOWS:)
18
19 YO QUERO TACO BELL.
20 NOW, YOU CAN GET TWO TACOS FOR
21 JUST 99 CENTS.
22 WANT SOME?
23
24 THE COURT: DO YOU NEED A SPELLING FOR YO QUERO?
25 Q. BY MR. GARDNER: DR. POLLAY, THAT WAS ALSO A
26 PRETTY SUCCESSFUL AD CAMPAIGN BY TACO BELL, RIGHT?
27 A. YEP.
28 Q. TACO BELL IS ALSO FAST FOOD, RIGHT?

7148

1 A. YEP.

2 Q. AND I WANT YOU TO AGAIN ASSUME, ALTHOUGH MAYBE
3 NOT IN THE SAME LEAGUE OR AREA OF SMOKING, AS FAR AS RISK
4 GOES, I WANT YOU TO ASSUME THAT FAST FOOD IS THE SECOND
5 LEADING CAUSE OF DEATH, OBESITY HERE IN THE STATE OF
6 CALIFORNIA.

7 OKAY?

8 A. WHICH, FAST FOOD OR OBESITY?

9 Q. FAST FOOD, WHICH MANY EMINENT MEDICAL
10 AUTHORITIES ARE NOW POINTING TO AS ONE OF THE MAJOR SOURCES
11 OF OBESITY.

12 YOU GOT THAT?

13 A. OKAY.

14 Q. OKAY. NOW, I WANT TO ASK YOU, IN LIGHT OF
15 THAT, AND THE HUMOR AND WHIMSY WE JUST SAW IN THAT AD, AND
16 THERE WAS -- YOU KNOW, WE ALL LAUGHED, BUT THAT AD, IN LIGHT
17 OF THE STANDARDS THAT YOU SET UP WITH MR. PIUZE WAS ASKING
18 YOU QUESTIONS, THAT AD WAS MISLEADING, TOO, WASN'T IT?

19 A. GIVEN YOUR ASSUMPTIONS, YES.

20 Q. OKAY. OKAY.

21 ALL RIGHT. I'M GOING TO CHANGE SUBJECTS.

22 DO YOU REMEMBER YOUR TESTIMONY, BOTH TODAY
23 AND YESTERDAY, ABOUT HOW THE ADS, THE CIGARETTE ADS, PRE
24 HILL & KNOWLTON INVOLVEMENT, WERE DIFFERENT THAN THE ADS
25 POST HILL & KNOWLTON INVOLVEMENT?

26 A. YES.

27 Q. DO YOU REMEMBER THAT TESTIMONY?

28 A. YES.

7149

1 Q. AND AGAIN, THAT TIME PERIOD WAS DECEMBER 1953,
2 JANUARY 1954, RIGHT?

3 A. WELL --

4 Q. THE INITIATION OF THEIR INVOLVEMENT?

5 A. RIGHT.

6 Q. AND THAT'S THE TIME IN WHICH YOU TOLD US ON
7 DIRECT THAT THE INDUSTRY, EXCEPT FOR LIGGETT & MYERS, BECAUSE
8 OF HILL & KNOWLTON'S INVOLVEMENT, VOLUNTARILY CHANGED THE
9 NATURE OF THEIR ADS, RIGHT?

10 A. I DON'T THINK I SAID IT QUITE THAT WAY. I
11 THINK WHAT THE EVIDENCE I'M AWARE OF SHOWED IS THAT A PROCESS
12 BEGAN AT THAT POINT IN TIME, CONTINUING THROUGH THAT FIRST
13 SIX MONTHS OF THE YEAR, AND, I THINK, WAS A PRETTY COMPLETE
14 CONVERSION OF THE ADVERTISING STRATEGIES OF ALL FIRMS, EXCEPT
15 LIGGETT & MYERS.

16 ONE OTHER SMALL EXCEPTION WAS THERE WAS A BIT
17 OF MOMENTARY, WHAT YOU CALL IT, BACKSLIDING BY LORILLARD FOR
18 ITS KENT BRAND IN THE FALL OF THAT YEAR. A COUPLE OF ADS
19 THAT WERE RUN.

20 Q. SO NOT TO PUT TOO FINE A POINT ON IT, WE'RE
21 TALKING ABOUT 1964, THE TRANSFORMATION?

22 A. NO. '54.

23 Q. '54. EXCUSE ME.

24 1954, YOUR TESTIMONY IS THAT THE INDUSTRY GOT
25 TOGETHER, EXCEPT FOR LIGGETT & MYERS, AND VOLUNTARILY CHANGED
26 THE MESSAGE OF THEIR ADS, RIGHT?

27 A. YES, THE CHARACTER OF THEIR ADS.

28 Q. AND THE CHARACTER OF THEIR ADS THAT YOU'VE

7150

1 TESTIFIED THEY VOLUNTARILY CHANGED WAS PRE '54, THEY HAD
2 MESSAGES ABOUT THROAT SCRATCH, THROAT IRRITATION, RIGHT?

3 A. YES.

4 Q. COUGHING, RIGHT?

5 A. RIGHT.
6 Q. AND YOU SHOWED KIND OF A LITTLE
7 BEFORE-AND-AFTER STUFF WITH MR. PIUZE ON DIRECT, RIGHT?
8 A. YES.
9 Q. I WANT TO SHOW YOU A COUPLE OF ADS.
10 MR. PIUZE, DO YOU WANT TO LOOK AT THEM?
11 MR. PIUZE: SURE.
12 THE COURT: AND YOUR NEXT NUMBER UP IS GOING TO BE
13 182.
14
15 (SHORT PAUSE.)
16
17 THE COURT: ARE YOU FOLKS READY TO GO?
18 MR. GARDNER: YES, YOUR HONOR.
19 THE COURT: GREAT. THE NEXT NUMBER I HAD IS 182.
20 AND WHAT IS 182 GOING TO BE?
21 MR. GARDNER: 182 IS A 1953 CAMEL AD FROM
22 R.J. REYNOLDS.
23 THE COURT: THANK YOU.
24 MR. GARDNER: I'M SORRY, YOUR HONOR. I BLANKED ON
25 THE NUMBER.
26 THE COURT: 182.
27 MR. GARDNER: THANK YOU.
28
7151
1 (I.D. 182 - AD FOR CAMELS)
2
3 Q. BY MS. GARDNER: CAN YOU SEE THAT, DR. POLLAY?
4 A. YES.
5 Q. YOU RECOGNIZE THAT AD, DON'T YOU?
6 A. YES.
7 Q. THAT AD CAME FROM YOUR WEBSITE THAT YOU
8 TESTIFIED ABOUT ON DIRECT, DIDN'T IT?
9 A. WELL, IT'S NOT MY WEBSITE. I DISTRIBUTED THE
10 MATERIALS, BUT SOMEONE ELSE MANAGES AND SUPPORTS THE WEBSITE.
11 Q. OH, OKAY. BUT THAT WEBSITE IS CALLED THE
12 POLLAY 20TH CENTURY TOBACCO ADVERTISING COLLECTION, RIGHT?
13 A. THAT'S CORRECT.
14 Q. OKAY. GO AHEAD. LOOK AT THE TEXT ON THE SIDE
15 OF THE AD, WHICH I ASSUME YOU PULLED FROM THE AD BECAUSE IT'S
16 KIND OF HARD TO READ ON THE AD, SO YOU DID THAT FOR BENEFIT
17 OF PEOPLE WHO VIEW THAT WEBSITE, RIGHT?
18 A. I DIDN'T DO IT. I DON'T MANAGE THE WEBSITE.
19 Q. FAIR ENOUGH. FAIR ENOUGH, DR. POLLAY.
20 BUT THAT WAS WHAT -- WHAT WAS DONE, REGARDLESS
21 OF WHO DID IT, RIGHT?
22 A. YES.
23 Q. THIS AD IS 1953, RIGHT?
24 A. YES.
25 Q. THAT'S ACCURATE, RIGHT?
26 A. YES.
27 Q. OKAY. THAT'S PRE HILL & KNOWLTON INVOLVEMENT
28 IN THE INDUSTRY, RIGHT?
7152
1 A. YES.
2 Q. CAN YOU SHOW ME ON HERE WHERE IT TALKS ABOUT
3 THROAT IRRITATION OR THROAT SCRATCH?
4 A. IT DOESN'T IN THIS AD. IN FACT, R.J. REYNOLDS
5 HAD PAVED THE WAY, SET THE EXAMPLE FOR THE INDUSTRY. THEY
6 WERE THE FIRST TO CONVERT THEIR ADS, AND THEY WERE CONVERTED
7 PRIOR TO THE PLAZA HOTEL MEETING.
8 Q. OKAY. YOU DIDN'T TELL US THAT YESTERDAY, DID
9 YOU, DR. POLLAY?

10 A. I DON'T REMEMBER BEING ASKED THAT QUESTION, NO.
11 Q. SO R.J. REYNOLDS BROKE FROM THE PACK; THEY WERE
12 FIRST.
13 THAT'S YOUR TESTIMONY, RIGHT?
14 A. RIGHT. THEY SET THE EXAMPLE.
15 Q. OKAY. THEY SET THE EXAMPLE BY -- WITHOUT ANY
16 ENCOURAGEMENT FROM HILL & KNOWLTON, TAKING ANY REFERENCE TO
17 THROAT SCRATCH OR THROAT IRRITATION OUT OF THEIR ADS, RIGHT?
18 A. THAT'S CORRECT.
19 Q. DID THE OTHER COMPANIES DO THAT BEFORE 1954?
20 A. THERE MAY HAVE BEEN SOME. BECAUSE IT'S CLEAR
21 IN THE HILL & KNOWLTON DOCUMENTS THAT THE COMPANIES
22 RECOGNIZED THE PROBLEM WITHOUT HILL & KNOWLTON CALLING IT TO
23 THEIR ATTENTION.
24 Q. SO BEFORE THIS BIG MEETING AT THE PLAZA HOTEL,
25 THE INDUSTRY HAD ALREADY FIGURED OUT THE PROBLEM WITH THEIR
26 ADVERTISEMENTS, RIGHT?
27 A. SOME HAD, CERTAINLY.
28 Q. SURE. SO YOUR TESTIMONY IS, JUST SO THAT I
7153
1 UNDERSTAND, YOUR TESTIMONY IS NOT THAT THE INDUSTRY, AS A
2 GROUP IN LOCKSTEP, MADE ANY DECISIONS TO CHANGE THEIR
3 ADVERTISING.
4 THAT'S WHAT YOU JUST TOLD ME, RIGHT?
5 A. MY TESTIMONY IS THAT THERE'S AN AMAZING
6 COINCIDENCE OF ALL THE FIRMS CHANGING THEIR ADVERTISING AND
7 CHANGING IT IN THE SAME WAY, WITHIN A MATTER OF A FEW MONTHS
8 AFTER THE PLAZA HOTEL MEETING.
9 Q. WELL, LET'S TAKE A LOOK AT THAT COINCIDENCE.
10 OKAY.
11 NEXT EXHIBIT, YOUR HONOR, IS IT 183?
12 THE COURT: IT CERTAINLY IS.
13 183, AND WHAT'S THAT GOING TO BE?
14 MR. GARDNER: IT'S AN ARTICLE DATED DECEMBER 21, 1953
15 FROM "ADVERTISING AGE" NEWSPAPER.
16 THE COURT: THANK YOU.
17
18 (I.D. 183 - 12-21-53 ARTICLE
19 FROM "ADVERTISING AGE" NEWSPAPER)
20
21 MR. GARDNER: MR. PIUZE, YOU WANT TO LOOK AT THIS?
22 YOU DON'T HAVE TO.
23 THE COURT: READY TO GO?
24 MR. PIUZE: AND I'M READY TO SAY, UNLESS THE EXPERT
25 HAS READ, RELIED OR CONSIDERED THE DOCUMENT, HE SHOULDN'T BE
26 CROSS-EXAMINED ON IT.
27 THE COURT: THANK YOU.
28 MR. GARDNER, I KNOW THAT YOU'RE GOING TO BE
7154
1 ASKING THIS GENTLEMAN WHETHER HE'S SEEN THESE, AREN'T YOU?
2 MR. GARDNER: YES, YOUR HONOR.
3 THE COURT: OKAY.
4 WHY DON'T YOU LAY THAT FOUNDATION, AND YOU CAN
5 GO ON.
6 Q. BY MR. GARDNER: "ADVERTISING AGE," IT'S THE
7 NATIONAL NEWSPAPER OF YOUR INDUSTRY, ISN'T IT?
8 A. YES. TRADE JOURNAL.
9 Q. TRADE JOURNAL?
10 A. YEP.
11 Q. IT'S AUTHORITATIVE, RIGHT?
12 A. YES. IT PRESENTS CURRENT NEWS, TO THE BEST OF
13 ITS ABILITY, TO KEEP ON TOP OF BREAKING STORIES.
14 Q. SURE. AND YOU'VE TESTIFIED ABOUT ARTICLES OUT

15 OF "ADVERTISING AGE" IN THE PAST, HAVEN'T YOU, IN DEPOSITION
16 OR IN TRIAL?

17 A. WELL, NO DOUBT IN DEPOSITION. I'M NOT -- I
18 DON'T HAVE ANY SPECIFIC RECALL FROM TRIAL. BUT I'VE
19 CERTAINLY TAKEN LOTS OF HISTORICAL NOTES FROM "ADVERTISING
20 AGE."

21 Q. ARE YOU AWARE OF AN ARTICLE IN
22 DECEMBER 21, 1953, ENTITLED, "CIGARETTE MAKERS URGED TO PURGE
23 MEDICAL CLAIMS"?

24 A. I COULD PROBABLY ANSWER THAT BETTER IF I COULD
25 SEE ITS FORMAT.

26 Q. SURE.

27 THE COURT: WHY DON'T YOU BRING IT OVER TO HIM.

28 THE WITNESS: IT MAY JOG MY MEMORY.

7155

1 MR. GARDNER: MAY I APPROACH, YOUR HONOR?

2 THE COURT: OF COURSE.

3 THE WITNESS: I'M SORRY. I DON'T SEE IT. WHERE?

4 Q. BY MR. GARDNER: I'M SORRY. THAT'S BECAUSE I
5 CHANGED PAGES ON YOU.

6 A. OKAY.

7 Q. RIGHT THERE.

8 A. MY RECOLLECTION OF THIS IS DIM. BUT I'M SURE,
9 BECAUSE I DID A LOT OF HISTORICAL NOTETAKING, THAT I HAVE
10 SEEN THAT BEFORE.

11 Q. FAIR ENOUGH.

12 MAY I PROCEED, YOUR HONOR?

13 THE COURT: YES.

14 Q. BY MR. GARDNER: NOW, FOR EVERYBODY'S BENEFIT.
15 THIS EXHIBIT 183, AND IT'S DATED DECEMBER 21, 1953, RIGHT,
16 DR. POLLAY?

17 A. YES.

18 Q. THAT WAS RIGHT IN THE MIDDLE OR WITHIN DAYS OF
19 THE HILL & KNOWLTON MEETING AT THE PLAZA HOTEL IN NEW YORK,
20 RIGHT?

21 A. THAT'S CORRECT. IT WAS IN THE WEEK FOLLOWING.

22 Q. SO IT'S BETWEEN THE MEETING AND THE FRANK
23 STATEMENT THAT WE TALKED ABOUT, RIGHT?

24 A. THAT'S CORRECT. IT'S AFTER THE TWO DAYS, PLAZA
25 HOTEL MEETINGS ON THE 14TH AND THE 15TH.

26 Q. OKAY. AND I'VE TURNED THE PAGE. THE PART I
27 WANT TO LOOK AT IS THIS PART.

28 CAN YOU READ THE NAME OF THAT ARTICLE FOR ME.

7156

1 A. (READING):

2

3 CIGARETTE MAKERS URGED TO PURGE
4 MEDICAL CLAIMS.

5

6 Q. OKAY. AND WHAT'S THE BYLINE DATE?

7 A. DECEMBER 15, NEW YORK.

8 Q. OKAY. IS THAT BEFORE OR AFTER THE

9 HILL & KNOWLTON PLAZA HOTEL MEETING?

10 A. WELL, IT'S ON THE SECOND DAY OF THOSE MEETINGS.
11 THE SAME DAY THAT THE MEMO WAS WRITTEN. WE SAW A MEMO IN THE
12 AFTERNOON. THE MEETINGS APPARENTLY FINISHED IN THE MORNING.

13 Q. OKAY. WHY DON'T YOU GO AHEAD AND READ THAT
14 FIRST PARAGRAPH THAT I HAVE HIGHLIGHTED, SLOWLY FOR US,
15 PLEASE.

16 A. (READING):

17

18 CIGARETTE ADVISERS WERE URGED
19 TODAY BY THE NATIONAL BETTER BUSINESS BUREAU

20 TO ADOPT AN EIGHT-POINT CODE TO ELIMINATE
21 UNFOUNDED HEALTH CLAIMS IN CIGARETTE
22 ADVERTISING.
23
24 Q. OKAY. WERE YOU AWARE THAT THAT TOOK PLACE, THE
25 NATIONAL BUSINESS -- NATIONAL BETTER BUSINESS BUREAU
26 ENCOURAGED THE CIGARETTE COMPANIES TO ADOPT AN EIGHT-POINT
27 CODE DESIGNED TO ELIMINATE UNFOUNDED HEALTH CLAIMS IN THEIR
28 ADVERTISING IN DECEMBER OF 1953?

7157

1 A. I WAS NOT. IF I WAS AT ONE TIME PREVIOUSLY, I
2 HAVE LONG FORGOTTEN IT.

3 Q. I WANT TO LOOK AT A COUPLE OF THE POINTS OF
4 THIS EIGHT-POINT CODE THAT WAS URGED BY THE NATIONAL BETTER
5 BUSINESS BUREAU.

6 WHY DON'T YOU READ -- AND I CAN MAKE IT BIGGER
7 IF YOU WANT.

8 WHY DON'T YOU READ NO. 2 THAT I HAVE
9 HIGHLIGHTED THERE, PLEASE.

10 A. (READING:)

11

12 2. CLAIMS THAT CIGARETTE
13 SMOKING IS BENEFICIAL.

14

15 SO I GUESS THIS IS WHAT'S SUPPOSED TO BE
16 ELIMINATED OR SOMETHING LIKE THAT.

17 (READING:)

18

19 CIGARETTE ADVERTISING SHOULD
20 NOT CLAIM, DIRECTLY OR BY IMPLICATION, THAT
21 CIGARETTE SMOKING IS BENEFICIAL TO HEALTH OR
22 UNDER ANY CONDITION PHYSIOLOGICALLY
23 BENEFICIAL TO ANY OF THE BODILY SYSTEMS.

24

25 Q. OKAY. THANK YOU.

26 OKAY. I'D LIKE TO GO HERE. THIS IS THE SAME
27 ARTICLE, CONTINUED FROM PAGE 3, RIGHT?

28 A. YES.

7158

1 Q. CAN YOU READ -- LET'S READ THIS ONE FIRST.
2 CAN YOU READ THAT OTHER PART OF THE CODE HERE
3 FOR US, DR. POLLAY.

4 A. (READING):

5

6 CLAIMS THAT A BRAND IS
7 LESS HARMFUL: IF IT IS CLAIMED THAT BY
8 VIRTUE OF ITS INGREDIENTS, METHOD OF
9 MANUFACTURE, LENGTH, ADDED FILTER OR FOR ANY
10 OTHER REASON, SMOKING A GIVEN BRAND OF
11 CIGARETTE IS LESS HARMFUL TO THE RESPIRATORY
12 ORGANS OR ANY BODILY SYSTEM, SUCH CLAIMS
13 SHOULD BE BASED ON IMPARTIAL CLINICAL TEST
14 DATA OR OTHER COMPETENT PROOF AND SHOULD
15 EXIST TO A PHYSIOLOGICALLY SIGNIFICANT
16 DEGREE.

17

18 THE COURT: MR. GARDNER, I'M GOING STOP YOUR CLOCK
19 FOR HALF A SECOND. THERE, APPARENTLY, IS A MAJOR PROBLEM
20 GOING ON. I'LL BE RIGHT BACK.

21 REMEMBER YOUR ADMONITIONS. DON'T LEAVE. I'LL
22 BE RIGHT BACK.

23

24 (SHORT PAUSE.)

25
26 THE COURT: SORRY. I'M BACK.
27 STILL IN THE MATTER OF RELLER VERSUS
28 PHILIP MORRIS.
7159
1 ALL PARTIES, ATTORNEYS AND WITNESSES ARE STILL
2 PRESENT.
3 I APOLOGIZE.
4 THEY WERE HAVING A LITTLE DISPUTE.
5 THE CLOCK'S RUNNING.
6 MR. GARDNER: THANK YOU, YOUR HONOR.
7 Q. DR. POLLAY, CAN YOU READ THE FIFTH POINT OF
8 THIS SUGGESTED CODE FOR US, PLEASE.
9 A. (READING:)
10
11 NO. 5. CLAIMS THAT A BRAND
12 IS LESS HARMFUL --
13
14 I THINK I JUST READ THIS.
15 Q. OH, I'M SORRY. WELL, THEN --
16 A. I CAN READ IT AGAIN.
17 Q. LET'S NOT READ IT AGAIN. COMMERCIALS MAYBE.
18 READING, NO.
19 CAN YOU READ THAT PARAGRAPH FOR US, PLEASE.
20 A. OKAY. AFTER THE LIST OF THE EIGHT POINTS.
21
22 'THE BUREAU'S RECOMMENDATIONS,'
23 MR. WILSON SAID, 'ARE BASED PRIMARILY ON
24 FINDINGS OF THE FEDERAL TRADE COMMISSION IN
25 SUPPORT OF CEASE AND DESIST ORDERS WHICH IT
26 HAS ISSUED IN THE PAST AGAINST SOME LEADING
27 CIGARETTE ADVERTISERS.'
28
7160
1 Q. JUST TO MAKE SURE I UNDERSTAND THIS, THIS
2 EIGHT-POINT PLAN FROM THE NATIONAL BETTER BUSINESS BUREAU WAS
3 BASED ON PRIOR CEASE AND DESIST ORDERS FROM THE FTC AGAINST
4 THE CIGARETTE MANUFACTURERS, RIGHT?
5 A. RIGHT. THE FTC IN THE '40S HAD PROSECUTED ALL
6 THE MANUFACTURERS FOR THEIR MISLEADING ADVERTISING AND,
7 ULTIMATELY, GOT CEASE AND DESIST ORDERS IN THE EARLY '50S.
8 Q. RIGHT. AND THESE CEASE AND DESIST ORDERS WERE
9 THE VERY SUBJECT OF THE ADVERTISEMENTS THAT YOU TESTIFIED
10 EARLIER THAT WERE --
11 A. THEY WERE ON THE SUBJECT THAT THEY ONLY APPLIED
12 TO THE OLD CAMPAIGNS THAT WERE NO LONGER BEING RUN.
13 Q. SO IF THINGS LIKE SAYING THAT CIGARETTES WERE
14 LESS IRRITATING, THAT'S DIFFERENT THAN WHAT YOU TALKED ABOUT
15 YESTERDAY WITH MR. PIUZE?
16 A. NO. THE -- I THINK THE PRINCIPLE'S THE SAME.
17 Q. OKAY. SO WE ARE TALKING ABOUT THE SAME TYPES
18 OF ADS THAT THE FTC SOUGHT AND GOT CEASE AND DESIST ORDERS
19 AGAINST THE LEADING CIGARETTE ADVERTISERS?
20 A. I THINK THEY'RE DESCRIBED AT THE LEADING OF THE
21 ARTICLE AS DECEPTIVE OR MISLEADING ADVERTISING.
22 Q. RIGHT. AND THEY'RE DECEPTIVE. I MEAN, YOU'VE
23 LOOKED AT THIS BEFORE, RIGHT, DR. POLLAY?
24 YOU'VE LOOKED AT THIS HISTORY, RIGHT?
25 A. I'VE SEEN -- YES, I'VE SEEN THE FEDERAL TRADE
26 COMMISSION COMPLAINTS AND ADJUDICATIONS IN THE '40S AND '50S,
27 YES.
28 Q. SURE. AND LEADING ALL THE WAY UP UNTIL THIS
7161

1 ARTICLE, THERE WAS A SERIES OF FEDERAL TRADE COMMISSION
2 ORDERS, RIGHT, AGAINST THE TOBACCO INDUSTRY, AGAINST
3 DIFFERENT TOBACCO COMPANIES, SAYING QUIT TELLING US, QUIT
4 TELLING THE PUBLIC THAT YOUR CIGARETTES ARE LESS IRRITATING,
5 RIGHT?
6 A. WELL, THEY WEREN'T PROACTIVE IN CONSTRAINING
7 THE FUTURE SO MUCH AS THEY WERE CENSORING THAT YOU SHOULDN'T
8 HAVE DONE WHAT YOU DID BACK THEN.
9 Q. OKAY. WELL, THAT'S FAIR ENOUGH.
10 LET'S -- MAYBE IF WE CAN JUST AGREE ON THIS, WE
11 CAN MOVE ON.
12 YOU'D AGREE WITH ME, WOULDN'T YOU, DR. POLLAY,
13 THAT THERE HAD BEEN A SERIES OF ORDERS FROM THE FEDERAL TRADE
14 COMMISSION TELLING THE LEADING CIGARETTE MANUFACTURERS, DON'T
15 PUT OUT ADS THAT CLAIM THAT YOUR CIGARETTES ARE LESS
16 IRRITATING THAN SOMEBODY ELSE'S, RIGHT?
17 A. YES.
18 Q. OKAY. AND AFTER THIS SERIES OF ADS, OR THESE
19 SERIES OF ORDERS FROM THE FTC, RIGHT -- AND THEY HAVE THE
20 AUTHORITY TO REGULATE ADVERTISING IN THE UNITED STATES,
21 RIGHT?
22 A. YES. AND THAT'S WHAT THEY HAD ATTEMPTED TO DO
23 WHEN THEY LAID CHARGES IN THE EARLY '40S.
24 Q. IT'S NOT JUST THE EARLY '40S. THESE
25 ORDERS -- I MEAN, WE CAN LOOK AT THEM IF YOU WANT.
26 A. THE ORDERS CAME OUT IN THE '50S, BUT IT TOOK A
27 BETTER PART OF THE DECADE TO GET THE JUDGMENTS.
28 Q. LET'S -- YOU'RE FAMILIAR WITH THE AUTHOR,
7162

1 JOHN CALFEE, AREN'T YOU?
2 THE COURT: SPELL IT, PLEASE.
3 THE WITNESS: YES.
4 THE COURT: CAN YOU SPELL CALFEE?
5 MR. GARDNER: YES, YOUR HONOR. C-A-L-F-E-E.
6 THE COURT: THANK YOU.
7 Q. BY MR. GARDNER: LET ME ASK YOU, THE FTC
8 REGULATIONS THAT YOU TALKED ABOUT THAT ULTIMATELY BANNED THE
9 KIND OF ADS THAT WE'VE BEEN TALKING ABOUT, THE LESS
10 IRRITATING, NO THROAT SCRATCH KIND OF ADS, THAT PROHIBITION
11 CAME OUT IN SEPTEMBER OF 1955, RIGHT?
12 A. THE SELF-REGULATORY CODE THAT WE LOOKED AT.
13 BUT THEN TO CLARIFY. WHAT WE'RE REALLY TALKING
14 ABOUT IS NOW THE FTC GUIDELINES OF SEPTEMBER 1955. WE SAW A
15 DOCUMENT YESTERDAY, A TWO-PAGE DOCUMENT, WHICH HAD ON THE
16 SECOND PAGE THOSE GUIDELINES.
17 Q. SO THE SEPTEMBER 1955 FTC REGULATIONS, YOU
18 DIDN'T MEAN TO SAY THEY WERE VOLUNTARY; THAT'S WHY YOU JUST
19 CHANGED WHAT YOU SAID, RIGHT?
20 A. THAT'S CORRECT. THAT -- THAT'S CORRECT.
21 Q. OKAY. OKAY. AND ISN'T IT A FACT, DR. POLLAY,
22 THAT THOSE SEPTEMBER 1955 REGULATIONS FROM THE FTC WERE
23 CIRCULATED TO THE INDUSTRY BACK IN 1954?
24 A. ACCORDING TO THAT DOCUMENT, THE FIRST EXPOSURE
25 WAS IN SEPTEMBER OF '54.
26 Q. OKAY. WELL, LET ME ASK YOU A FEW QUESTIONS,
27 THEN.
28 YOUR TESTIMONY IN THIS AREA IS NOW THAT SOME
7163
1 MANUFACTURERS, AT LEAST, CHANGED THEIR ADVERTISING ABOUT
2 THROAT SCRATCH BEFORE HILL & KNOWLTON OR THE TIRC EVER CAME
3 INTO THE PICTURE, RIGHT?
4 A. R.J. REYNOLDS DID, YES.
5 Q. DIDN'T PHILIP MORRIS AS WELL?

6 A. NOT THAT I RECALL. BUT --
7 Q. WOULD IT SURPRISE YOU IF I HAD SOME
8 PHILIP MORRIS ADS FROM 1953 THAT DON'T SAY ANYTHING ABOUT
9 THROAT SCRATCH?
10 THE COURT: I DON'T CARE WHAT WOULD SURPRISE HIM.
11 Q. BY MR. GARDNER: ARE YOU AWARE --
12 THE COURT: CHANGE THE FORM OF THE QUESTION.
13 MR. GARDNER: YES, YOUR HONOR.
14 Q. ARE YOU AWARE OF ADVERTISEMENTS FROM
15 PHILIP MORRIS IN 1953, BEFORE THE INVOLVEMENT OF
16 HILL & KNOWLTON OR THE FORMATION OF THE TIRC, THAT SAY
17 NOTHING ABOUT THROAT SCRATCH OR IRRITATION?
18 A. THERE MIGHT BE SOME.
19 Q. OKAY.
20 A. I MEAN, THAT'S THE REASON WHY THE STUDY, OF
21 COURSE, LOOKS AT MANY ADS, TO KIND OF GET SOME DATA SO THAT
22 YOU'RE NOT JUST LOOKING AT INDIVIDUAL EXAMPLES.
23 Q. AND THAT -- THAT ARTICLE THAT YOU'RE TALKING
24 ABOUT, YOU DIDN'T WRITE THAT, RIGHT?
25 A. THAT'S CORRECT.
26 Q. OKAY. SO NOW, WE'VE GOT AT LEAST TWO COMPANIES
27 THAT HAVE BROKEN FROM THE PACK BEFORE HILL & KNOWLTON AND THE
28 TIRC ON THEIR OWN CHANGE THEIR ADS, RIGHT?
7164
1 A. WELL, IF YOU WANT ME TO TAKE THAT AS AN
2 ASSUMPTION, THAT'S NOT MY RECOLLECTION OF WHAT THE ARTICLE
3 SAYS. BUT THERE MAY BE SOME EXAMPLES WHERE PHILIP MORRIS WAS
4 EXPERIMENTING WITH NEW FORMS OF ADVERTISING.
5 Q. FAIR ENOUGH.
6 LET'S --
7 THE COURT: MR. GARDNER, STOP --
8 MR. GARDNER: SORRY, YOUR HONOR.
9 THE COURT: -- ADDING COMMENTS TO THINGS.
10 MR. GARDNER: YES, YOUR HONOR.
11 Q. ON TOP OF THAT, WE HAVE THE FTC, THE FEDERAL
12 TRADE COMMISSION, SEEKING AND GETTING CEASE AND DESIST ORDERS
13 COVERING THE SAME KIND OF ADVERTISING FOR THE MAJOR
14 MANUFACTURERS THROUGHOUT THE EARLY 1950S, BUT PRECEDING
15 HILL & KNOWLTON AND THE TIRC, RIGHT?
16 A. YES. THERE'D BEEN A DECADE OF THAT KIND OF
17 EFFORT.
18 Q. AND BEFORE THE FTC COMES OUT WITH THEIR
19 REGULATIONS IN SEPTEMBER OF 1955, THEY CIRCULATED DRAFT
20 REGULATIONS THAT WERE GOING TO PROHIBIT THE SAME TYPE OF
21 ADVERTISING IN 1954, RIGHT?
22 A. IN SEPTEMBER OF '54, YEP.
23 Q. AND DURING THE MIDDLE OF THE HILL & KNOWLTON
24 MEETING, WE HAVE THE NATIONAL BETTER BUSINESS BUREAU URGING
25 CIGARETTE MAKERS TO QUIT MAKING THESE SAME KIND OF ADS,
26 RIGHT?
27 A. YEP.
28 Q. THAT WAS THIS EIGHT-POINT PROGRAM THAT WE JUST
7165
1 LOOKED AT?
2 A. YES.
3 Q. IN LIGHT OF ALL OF THAT, ISN'T IT FAIR TO SAY
4 THAT -- THAT THE TOBACCO COMPANIES AND THE INDUSTRY HAD LOTS
5 OF REASONS TO CHANGE THEIR ADVERTISEMENTS THAT HAVE NOTHING
6 TO DO WITH HILL & KNOWLTON AND THE TIRC?
7 A. ABSOLUTELY. THEY HAVE LOTS OF REASONS. THE
8 PRIMARY ONES ARE FINANCIAL AND HAVE LITTLE TO DO WITH
9 HILL & KNOWLTON.
10 Q. I WANT TO GO BACK TO A FEW ADS. OKAY?

11 A. OKAY.
12 THE COURT: DO YOU WANT ANOTHER NUMBER?
13 MR. GARDNER: YES, PLEASE, YOUR HONOR.
14 THE COURT: 184.
15 MR. GARDNER: 184.
16 THE COURT: 184. AND WHAT IS IT?
17 MR. GARDNER: IT'S A BLOWUP OF THE SKYY VODKA
18 ADVERTISEMENT.
19 THE COURT: I'M SORRY, SKYY?
20 MR. GARDNER: SKYY, S-K-Y-Y, VODKA.
21 THE COURT: THANK YOU.
22 MR. GARDNER: FROM "IN STYLE," 2001.
23 THE COURT: THANK YOU.
24
25 (I.D. 184 - SKYY VODA AD BLOWUP)
26
27 Q. BY MR. GARDNER: DR. POLLAY, CAN YOU SEE THIS
28 FROM THERE?
7166
1 A. YES.
2 Q. WOULD YOU DESCRIBE THIS ADVERTISEMENT AS
3 PORTRAYING AN IMAGE OF GLAMOUR?
4 A. YES. CERTAINLY, THERE'S AN OBVIOUS ATTEMPT AT
5 SEX APPEAL.
6 Q. SURE. I MEAN, WE'VE GOT THE WOMAN PULLING ON A
7 TIE, RIGHT?
8 A. YES.
9 Q. AND THE OLD-FASHIONED MOVIE CAMERA UP IN THE
10 CORNER, RIGHT?
11 A. YES.
12 Q. SO IT'S FAIR TO SAY THAT THIS AD WAS DESIGNED
13 TO PORTRAY SEX APPEAL AND GLAMOUR, ISN'T IT?
14 A. YES.
15 Q. AND AGAIN, THIS IS AN AD FOR ALCOHOL, RIGHT?
16 A. YES.
17 Q. AND YOU STILL REMEMBER THE ASSUMPTIONS I ASKED
18 YOU TO MAKE EARLIER, SOME OF THE THINGS ABOUT ALCOHOL-RELATED
19 DEATHS, RIGHT?
20 A. YES.
21 Q. THERE'S NO FEDERALLY MANDATED WARNING ON HERE,
22 IS THERE?
23 A. NOT ON THE AD, NO.
24 Q. IS THIS AD MISLEADING?
25 A. IT COULD BE MORE INFORMATIVE, FOR SURE.
26 THE COURT: NEXT NUMBER UP, I ASSUME YOU WANT
27 185. WHAT IS 185 BESIDES A BLOWUP?
28 MR. GARDNER: 185 IS A BLOWUP OF A SMIRNOFF VODKA AD.
7167
1 THE COURT: OKAY. SMIRNOFF VODKA AD, 185.
2
3 (I.D. 185 - SMIRNOFF VODKA AD BLOWUP)
4
5 Q. BY MR. GARDNER: CAN YOU SEE THAT, DR. POLLAY?
6 A. YES.
7 Q. I BELIEVE, DURING DIRECT, MR. PIUZE ASKED YOU
8 IF YOU LIKED HORSES.
9 A. YES.
10 Q. DO YOU LIKE BULLS?
11 A. NOT WHEN THEY'RE CHARGING AT ME.
12 Q. THIS IS A DEPICTION OF THE BULLS RUNNING
13 IN --
14 A. PAMPLONA, OR SOMETHING LIKE THAT.
15 Q. THANK YOU.

16 THAT'S AN ATHLETIC ACTIVITY, OR AT LEAST IT
17 BETTER BE, RIGHT?
18 A. IT'S CERTAINLY A RISK-TAKING ACTIVITY.
19 Q. THANK YOU.
20 AND I WOULD ASSUME YOU'D AGREE WITH ME THAT
21 HAVING YOUR SMIRNOFF VODKA BEFORE YOU RUN WITH THE BULLS IN
22 PAMPLONA IS NOT A VERY GOOD IDEA, RIGHT?
23 A. YES.
24 Q. WOULD YOU AGREE WITH ME THAT THIS AD IS
25 MISLEADING?
26 A. WELL, THIS AD'S A LITTLE DIFFERENT EXAMPLE. I
27 MEAN, BECAUSE WHEN YOU LOOK AT IT, IT'S -- THE BULLS AREN'T
28 CHASING THE PEOPLE. THE PEOPLE ARE CHASING THE BULLS.
7168
1 SO I THINK THE MESSAGE OF THIS AD IS THAT THE
2 SMIRNOFF PUTS ENOUGH FIRE IN YOUR BELLY TO TRIGGER THIS KIND
3 OF ROLE REVERSAL.
4 Q. THAT KIND OF ROLE --
5 A. SO IT'S MEANT TO BE MORE A HUMOROUS TAKE, I
6 THINK, ON THE EVENT, RATHER THAN BEING TAKEN LITERALLY.
7 Q. THAT KIND OF ROLE REVERSAL, NOT A VERY GOOD
8 IDEA, IS IT, DR. POLLAY?
9 A. WELL, THAT'S CORRECT. I DON'T THINK IT'S MEANT
10 TO BE TAKEN LITERALLY.
11 THE COURT: NEXT NUMBER UP IS 186. AND IS THAT A --
12 MR. GARDNER: 186, YOUR HONOR?
13 THE COURT: YES.
14 MR. GARDNER: IT'S A JOSE CUERVO AD.
15 THE COURT: OKAY. BLOWUP OF A JOSE CUERVO AD.
16
17 (I.D. 186 - JOSE CUERVO AD BLOWUP)
18
19 Q. BY MR. GARDNER: CAN YOU SEE THAT, DR. POLLAY?
20 A. SORT OF. I CAN'T READ THE TEXT OR SEE WHAT'S
21 WRITTEN ON THE FOREHEAD. I SEE SOMETHING IS WRITTEN ON THE
22 FOREHEAD.
23 Q. MAYBE I'LL COME UP INTO THE MIDDLE -- IF THAT'S
24 OKAY, YOUR HONOR, SO EVERYBODY CAN SEE IT?
25 THE COURT: SURE.
26 I ASSUME YOU WON'T BE TOO LONG, BECAUSE WE'RE
27 CLOSE TO THE TIME.
28 MR. GARDNER: THIS WILL BE REALLY QUICK.
7169
1 THE COURT: OKAY.
2 Q. BY MR. GARDNER: CAN YOU SEE IT NOW,
3 DR. POLLAY?
4 A. YES. YES. "IT IMPROVES YOUR CELL PHONE
5 RECEPTION."
6 Q. WHAT HAS THE WOMAN JUST DONE IN THIS AD?
7 A. LOOKS LIKE WRITTEN THE TELEPHONE NUMBER ON HIS
8 FOREHEAD.
9 Q. WHAT DID SHE USE TO WRITE IT WITH?
10 A. I CAN'T TELL. MAYBE A LIPSTICK, OR SOMETHING
11 LIKE THAT.
12 Q. YEAH. I BELIEVE THAT'S RIGHT.
13 A. YEAH.
14 Q. AND I BELIEVE OF THE ADS YOU SAW EARLIER, YOU
15 TESTIFIED THAT THEY HAVE APPEAL TO BOTH SEXES?
16 A. YES.
17 Q. REMEMBER THAT?
18 WOULD YOU AGREE ME THAT THIS AD APPEALS TO BOTH
19 SEXES?
20 A. I THINK SO. OBVIOUSLY MAKING A CONNECTION IN A

21 DATING SITUATION.
22 Q. OKAY.
23 THE COURT: GOOD STOPPING POINT FOR A BREAK?
24 MR. GARDNER: YES, YOUR HONOR.
25 THE COURT: LADIES AND GENTLEMEN, YOU ARE ADMONISHED
26 THAT IT IS YOUR DUTY NOT TO CONVERSE AMONG YOURSELVES OR WITH
27 ANYONE ELSE ON ANY SUBJECT CONNECTED WITH THIS TRIAL OR TO
28 FORM OR EXPRESS ANY OPINION THEREON UNTIL THE CAUSE IS
7170
1 FINALLY SUBMITTED TO YOU.
2 I'LL SEE YOU AT 2 O'CLOCK.
3 I'M SORRY. ONE MINUTE AFTER 2:00.
4
5 (RECESS.)
6
7 THE COURT: IN THE MATTER OF RELLER VERSUS
8 PHILIP MORRIS, BC 261796.
9 THE RECORD SHOULD REFLECT THAT ALL TWELVE
10 JURORS, FOUR ALTERNATES ARE PRESENT.
11 MR. PIUZE IS HERE FOR PLAINTIFF; MR. GARDNER,
12 MS. WILKINSON FOR DEFENDANT.
13 DR. LEWIS IS PRESENT.
14 DR. POLLAY IS ON THE WITNESS STAND.
15 YOU'RE STILL UNDER OATH.
16 THE CLOCK IS TICKING.
17 Q. BY MR. GARDNER: DR. POLLAY --
18 A. YES.
19 Q. -- THIS IS THE AD WE WERE LOOKING AT RIGHT
20 BEFORE THE BREAK, RIGHT?
21 A. YES.
22 THE COURT: 186.
23 MR. GARDNER: THANK YOU, YOUR HONOR.
24 Q. IT'S EXHIBIT NO. 186.
25 THERE'S NOTHING MISLEADING ABOUT THIS AD, IS
26 THERE?
27 A. WELL, IT DEPENDS ON WHAT YOU ASSUME ABOUT THE
28 LEVEL OF RISKS AND PUBLIC HEALTH THREAT THAT TEQUILA
7171
1 REPRESENTS.
2 Q. LOOKING AT THE FACE OF THIS AD, SEEING WHAT WE
3 SEE, THERE'S NOT ANYTHING MISLEADING ABOUT THIS AD ON THIS
4 PAGE, IS THERE?
5 A. THE JUDGMENT OF MISLEADING ALWAYS INVITES THE
6 COMPARISON OF HOW DOES WHAT YOU SEE COMPARE WITH WHAT YOU
7 GET.
8 IF WHAT YOU SEE IS ATTRACTIVE ENOUGH SO THAT
9 THE ISSUE IS, WHAT DO YOU GET, IS IT DEADLY, IS IT ADDICTIVE,
10 IS IT A MAJOR PUBLIC HEALTH ISSUE?
11 Q. AND IF I PUT THIS AD DOWN, YOU AND I COULD HAVE
12 A DEBATE OR A DISCUSSION ABOUT WHETHER ALL THOSE THINGS ARE
13 TRUE ABOUT ALCOHOL, COULDN'T WE?
14 A. RIGHT. AND IF WE GRANT THE ASSUMPTION THAT
15 THERE ARE THOSE MAJOR PROBLEMS, THEN I WOULD SAY THE AD IS
16 MISLEADING FOR FAILURE TO INFORM ABOUT THOSE.
17 Q. OKAY. AND YOU'VE SAID THIS A COUPLE OF TIMES
18 BEFORE, THAT THERE'S NOT ENOUGH INFORMATION ON THE AD; THAT'S
19 YOUR COMPLAINT, RIGHT?
20 A. WELL, THAT'S AN OBSERVATION, YES. THAT THERE'S
21 VERY LITTLE INFORMATION IN THE AD.
22 Q. BUT IF YOU LOOK AT THE ACTUAL CONTENT OF THIS
23 AD, THERE'S NOTHING MISLEADING ABOUT IT, IS THERE?
24 WHAT'S ON THIS PAGE, DR. POLLAY?
25 A. I'LL HAVE TO REPEAT. THE JUDGMENT ABOUT

26 MISLEADING DEPENDS ON WHAT YOU GET AS WELL AS WHAT YOU SEE.
27 IT'S THAT COMPARISON THAT LEADS TO THE CONCLUSION ABOUT
28 WHETHER IT'S MISLEADING OR NOT.

7172

1 Q. LET ME TAKE THE COMPARISON ASIDE AND LET ME ASK
2 YOU JUST TO LOOK AT THIS.

3 IF I TAKE THIS -- IF I TAKE THIS OFF, IS THERE
4 ANYTHING MISLEADING IN HERE, ANY WORDS THAT ARE MISSTATED?

5 THE COURT: I'M SORRY. WHAT ARE YOU TAKING OFF?

6 MR. GARDNER: IF YOU TAKE THE BOTTLE OF ALCOHOL OUT.

7 THE COURT: THANK YOU.

8 Q. BY MR. GARDNER: YOU CUT THAT OUT, YOU'VE GOT A
9 MAN AND A WOMAN, LIPSTICK, AND A HALF A PHONE NUMBER.

10 IS THERE ANYTHING MISLEADING ABOUT THAT?

11 A. YOU MEAN ARE THERE ANY FALSE STATEMENTS OF
12 FACTS?

13 NO.

14 Q. THANK YOU.

15 DR. POLLAY, YOU'VE TESTIFIED ABOUT WHAT YOU'VE
16 REFERRED TO AS THE INFORMATION ENVIRONMENT IN THE PAST,
17 HAVEN'T YOU?

18 A. I HAVE.

19 Q. AND THE INFORMATION ENVIRONMENT IS THE DATA OR
20 INFORMATION THAT'S OUT THERE GENERALLY FOR SOMEBODY IN THE
21 PUBLIC TO READ, SEE OR HEAR, RIGHT?

22 A. RIGHT.

23 Q. AND ADVERTISING THAT WE'VE BEEN TALKING ABOUT,
24 THAT'S ONE SMALL PART OF THE INFORMATION ENVIRONMENT, RIGHT?

25 A. I WOULDN'T SAY IT'S A SMALL PART. BECAUSE IT'S
26 DESIGNED TO BE IMPACTFUL AND PERSUASIVE AND WHAT'S CALLED
27 INTRUSIVE. AND IT'S A MAJOR PART -- IF YOU LOOK AT A
28 MAGAZINE, FOR EXAMPLE, IT'S A VERY MAJOR COMPONENT OF THE

7173

1 MAGAZINE. CERTAINLY OF OUR STREETSCAPE.

2 Q. ADVERTISING DOESN'T HAVE A MONOPOLY ON THE
3 INFORMATION ENVIRONMENT?

4 A. THAT'S CORRECT.

5 Q. AND YOU'VE REVIEWED THE INFORMATION ENVIRONMENT
6 MORE GENERALLY THAN ADVERTISING IN THE PAST, HAVEN'T YOU?

7 A. I HAVE.

8 Q. AND YOU TESTIFIED EARLIER TODAY ABOUT
9 ADVERTISEMENTS DURING 1963 THAT PLAYED ON TELEVISION, RIGHT?

10 A. YES.

11 Q. AND I ASSUME YOU COULD DO THE SAME THING WE
12 TALKED ABOUT FOR 1964, COULDN'T YOU?

13 A. YES.

14 Q. AND I ASSUME THAT BEFORE YOU CAME IN HERE
15 TODAY -- WELL, LET ME ASK YOU.

16 BEFORE YOU CAME IN HERE TODAY, YOU HAD LOOKED
17 AT THE INFORMATION ENVIRONMENT IN 1964 MORE GENERALLY THAN
18 JUST ADVERTISEMENTS, RIGHT?

19 A. YES.

20 Q. AND PART OF THE INFORMATION ENVIRONMENT IN 1964
21 INCLUDED NEW SHOWS, RIGHT?

22 A. RIGHT.

23 Q. AND DURING NEW SHOWS IN 1964, THERE WAS A LOT
24 OF DISCUSSION ABOUT SMOKING AND HEALTH; ISN'T THAT RIGHT?

25 A. WELL, "A LOT" IS KIND OF VAGUE. IT WASN'T THE
26 MAJOR STORY OF THE YEAR. THERE WERE OTHER STORIES THAT WERE
27 FAR MORE IMPORTANT.

28 Q. HAVE YOU EVER HEARD OF THE SURGEON GENERAL'S

7174

1 REPORT OF 1964 REFERRED TO AS THE BIGGEST HEALTH STORY IN THE

2 LAST CENTURY?
3 A. NO. BUT I COULD UNDERSTAND WHY IT MIGHT BE SO
4 DESCRIBED AS A HEALTH STORY. MY REFERENCE WASN'T TO JUST
5 RESTRICT IT TO HEALTH STORIES. I WAS THINKING ABOUT THE MANY
6 OTHER STORIES THAT DOMINATED THE HEADLINES IN 1964.
7 Q. IT'S FAIR TO SAY THAT THE SURGEON GENERAL'S
8 REPORT IN 1964, JANUARY, WAS A BIG NEWS STORY, RIGHT,
9 DR. POLLAY?
10 A. I DON'T EVEN THINK IT WOULD HAVE MADE THE TOP
11 TEN LIST OF THE YEAR.
12 Q. OKAY. THE SURGEON GENERAL'S REPORT CAME OUT IN
13 JANUARY 11TH, 1964, RIGHT?
14 A. RIGHT.
15 Q. THE FOLLOWING DAY, THE MAJOR NETWORKS RAN
16 ONE-HOUR NEWS PROGRAMS DEVOTED TO THE SURGEON GENERAL'S
17 REPORT, DIDN'T THEY?
18 A. WELL, I -- YOU SAY THAT -- I DON'T RECALL THAT
19 ALL THE NETWORKS DID, BUT THERE CERTAINLY WERE SOME
20 DISCUSSIONS ON SHOWS SUBSEQUENT TO THE SURGEON GENERAL'S
21 REPORT.
22 Q. AND THAT WAS PART OF THE INFORMATION
23 ENVIRONMENT, RIGHT?
24 A. YEP. FOR A DAY, OR TWO OR THREE, IT WAS
25 DEFINITELY A MAJOR STORY.
26 Q. AND WHEN YOU WERE TALKING ABOUT ADVERTISING,
27 YOU WERE PUTTING IT IN CONTEXT OF THE OVERALL INFORMATION
28 ENVIRONMENT, RIGHT?
7175
1 A. RIGHT.
2 Q. I'D LIKE TO SHOW YOU A LITTLE CLIP OF THE NEWS
3 COVERAGE IN 1964.
4 THE COURT: 187. AND THIS IS A VIDEO OF THE NEWS
5 STORIES?
6 MR. GARDNER: NBC'S COVERAGE, YES, YOUR HONOR.
7
8 (I.D. 187 - NBC NEWS CLIP VIDEO)
9
10 MR. PIUZE: SO, YOUR HONOR, BEFORE IT PLAYS, I'VE GOT
11 TO MAKE THE SAME OBJECTION. UNLESS HE'S SEEN IT, REVIEWED
12 IT, RELIED ON IT, I OBJECT TO HIM BEING CROSS-EXAMINED ON IT.
13 THE COURT: CAN I SEE YOU FOLKS AT SIDEBAR, PLEASE.
14
15 (THE FOLLOWING PROCEEDINGS WERE
16 HELD AT THE BENCH:)
17
18 THE COURT: THE RECORD SHOULD REFLECT THAT WE ARE AT
19 THE SIDEBAR WITH ALL COUNSEL.
20 MR. PIUZE, I'VE ALLOWED SOME OF IT, ALTHOUGH
21 IT'S NOT CLEAR IF HE RELIED ON IT BECAUSE SOME OF IT SEEMED
22 TO COME OFF A WEBSITE THAT HE HAD SOME CONNECTION WITH. SOME
23 OF THE INFORMATION WAS MATERIAL THAT HE SAID THAT HE IS SURE
24 HE HAD REVIEWED AT ONE TIME. SO I'M ASSUMING IT WAS PART OF
25 HIS FUND OF KNOWLEDGE. OKAY.
26 AND ALSO, BECAUSE IT IS CROSS-EXAMINATION AND
27 THESE ARE ADVERTISEMENTS THAT WERE MUCH -- MANY OF THE THINGS
28 WERE CLEARLY OUT THERE IN THE LARGER WORLD, OKAY, AND THIS
7176
1 MAN WASN'T BORN YESTERDAY, SO I ASSUME THAT HE MAY
2 HAVE -- AND THAT ISN'T AN INSULT TO HIM -- BUT I MEANT HE MAY
3 HAVE ACTUALLY SEEN SOME OF THESE AT ONE TIME OR ANOTHER.
4 OKAY.
5 THE PROBLEM THAT I HAVE IS WE'VE GOT A NEWS
6 CLIP, AND I DON'T HAVE FOUNDATION TO KNOW WHETHER OR NOT HE

7 SAW THE NEWS CLIPS AT THE TIME. AND I'M NOT QUITE -- ON THE
8 SURGEON GENERAL'S REPORT, AND I'M NOT REALLY SURE WHERE
9 YOU'RE GOING WITH THIS.
10 SO HELP ME OUT HERE BEFORE WE END UP WITH A
11 PROBLEM.
12 MR. GARDNER: YES, YOUR HONOR.
13 I BELIEVE THAT DR. POLLAY JUST SAID BEFORE HE
14 CAME IN TO TESTIFY, HE REVIEWED THE INFORMATION ENVIRONMENT
15 IN THE 1963-1964 TIME PERIOD. AND THAT PART OF THAT WAS THE
16 COVERAGE OF THE SURGEON GENERAL'S REPORT.
17 AND WHAT I WANT -- AND WHAT I WANT TO DO IS ASK
18 HIM ABOUT, IN REVIEWING, AFTER SEEING THE CLIP, WHETHER THAT
19 WENT INTO HIS CALCULATION OF THE IMPORTANCE OF ADS IN THE
20 INFORMATION ENVIRONMENT. HE'S TESTIFIED ABOUT THE
21 INFORMATION ENVIRONMENT MANY, MANY TIMES BEFORE, YOUR HONOR.
22 THE COURT: OKAY. I'M NOT SURE I TOOK IT IN QUITE
23 THE WAY YOU JUST SAID IT. FROM WHAT MR. -- DR. POLLAY SAID,
24 I THINK I MAY NOT HAVE HEARD IT QUITE THE SAME WAY.
25 SO I'M GOING TO INVITE HIM OVER HERE FOR A
26 SECOND, AND I'M GOING TO FIGURE OUT EXACTLY WHAT HE'S DONE.
27 I KNOW WHERE YOU WANT TO GO. I THINK. BUT -- AND I'VE
28 ALLOWED OTHER STUFF, BECAUSE THAT'S HIS AREA OF EXPERTISE.
7177
1 HE'S GOT A WEBSITE OR DONATED STUFF TO A WEBSITE, OR
2 WHATEVER.
3 MR. GARDNER: OKAY.
4
5 (THE FOLLOWING PROCEEDINGS WERE HELD
6 IN OPEN COURT IN THE PRESENCE
7 OF THE JURY:)
8
9 THE COURT: DR. POLLAY, CAN YOU DO ME A FAVOR.
10 CAN YOU COME WALK OVER HERE FOR JUST A SECOND.
11
12 (THE FOLLOWING PROCEEDINGS WERE
13 HELD AT THE BENCH:)
14
15 THE COURT: OKAY. THE RECORD SHOULD REFLECT THAT
16 DR. POLLAY IS AT SIDEBAR.
17 I'VE GOT A COUPLE OF QUESTIONS FOR YOU. OKAY.
18 YOU TESTIFIED EARLIER ABOUT AN INFORMATION
19 ENVIRONMENT, AND YOU SAID THAT IT INCLUDES ADVERTISING AND
20 OTHER SOURCES OF GENERAL SOURCES OF INFORMATION THAT A PERSON
21 MAY BE AWARE OF.
22 IS THAT GENERALLY CORRECT?
23 THE WITNESS: YES.
24 THE COURT: AND KEEP YOUR VOICE UP.
25 AND IN PREPARING FOR TODAY, DID YOU REVIEW THE
26 INFORMATION ENVIRONMENT GENERALLY FOR THE MID '60S,
27 INCLUDING '63, '64?
28 THE WITNESS: I DID.
7178
1 THE COURT: AND WHAT KIND OF THINGS DID YOU LOOK AT
2 OR WERE YOU FAMILIAR WITH TO PREPARE YOURSELF FOR TODAY THAT
3 INVOLVED THE INFORMATION ENVIRONMENT FROM THAT ERA?
4 THE WITNESS: THE NEWS COVERAGE THAT WAS
5 CHARACTERISTIC OF THOSE TIMES, THE MAJOR NEWS STORIES THAT
6 WERE IN THE PRESS IN 1954.
7 THE COURT: '64.
8 THE WITNESS: '64. SORRY.
9 THE COURT: ALL RIGHT. THANK YOU.
10 YOUR OBJECTION IS NOTED AND OVERRULED,
11 MR. PIUZE.

12 MR. PIUZE: OKAY.
13
14 (THE FOLLOWING PROCEEDINGS WERE HELD
15 IN OPEN COURT IN THE PRESENCE
16 OF THE JURY:)
17
18 Q. BY MR. GARDNER: DR. POLLAY, YOU REVIEWED THE
19 INFORMATION ENVIRONMENT THAT WAS ON TELEVISION AND OTHER
20 PLACES IN 1964, DIDN'T YOU?
21 A. YES.
22 Q. AND THAT INCLUDED THE TELEVISION NEWS COVERAGE
23 OF THE 1964 SURGEON GENERAL'S REPORT, RIGHT?
24 A. YES.
25 Q. I'M GOING TO PLAY A CLIP FROM IT. THIS IS THE
26 NBC COVERAGE, AND THEN I'M GOING TO ASK YOU A COUPLE
27 QUESTIONS.
28 THE COURT: THIS IS 187. THIS IS 187; IS THAT
7179
1 CORRECT?
2 MR. GARDNER: YES, YOUR HONOR. THANK YOU.
3 THE COURT: THANK YOU.
4
5 (VIDEOTAPE, EXHIBIT 187, WAS PLAYED
6 AND REPORTED AS FOLLOWS:)
7
8 IN ANOTHER SPECIAL REPORT,
9 NBC NEWS PRESENTS: SMOKING AND HEALTH.
10 THE BACKGROUND AND DETAILING
11 OF THE REPORT ISSUED TODAY BY THE UNITED
12 STATES SURGEON GENERAL'S ADVISORY COMMITTEE
13 ON SMOKING AND HEALTH BROUGHT TO YOU BY
14 ALKA-SELTZER FOR EFFECTIVE, SPEEDY RELIEF OF
15 HEADACHE AND UPSET STOMACH, AND BY ONE-A-DAY
16 BRAND MULTIPLE VITAMINS, THE LABEL WITH THE
17 BIG RED 1.
18 NOW, HERE'S NBC NEWS
19 CORRESPONDENT FRANK MAGEE.
20 THIS BOOK CONTAINING 387
21 CAREFULLY WORDED PAGES IS A FEDERAL
22 GOVERNMENT REPORT. ITS ENTITLED, "SMOKING
23 AND HEALTH, A REPORT OF THE ADVISORY
24 COMMITTEE TO THE SURGEON GENERAL OF THE
25 PUBLIC HEALTH SERVICE."
26 IT WAS RELEASED AT NOON TODAY,
27 AND IT SAYS, "IN VIEW OF THE CONTINUING AND
28 MOUNTING EVIDENCE FROM MANY SOURCES, IT IS
7180
1 THE JUDGMENT OF THE COMMITTEE THAT CIGARETTE
2 SMOKING CONTRIBUTES SUBSTANTIALLY TO
3 MORTALITY FROM CERTAIN SPECIFIC DISEASES AND
4 TO THE OVERALL DEATH RATE."
5 THAT IS THE BASIC CONCLUSION.
6 THE REPORT SAYS A GREAT DEAL MORE, AND IT
7 LEAVES A LOT UNSAID. BUT ITS KEY POINTS ARE
8 THESE.
9 ITEM. CIGARETTE SMOKING IS
10 CAUSALLY RELATED TO LUNG CANCER IN MEN. IN
11 COMPARISON TO NONSMOKERS, AVERAGE MALE
12 SMOKERS OF CIGARETTES HAVE APPROXIMATELY A
13 NINE- TO TENFOLD RISK OF DEVELOPING LUNG
14 CANCER AND HEAVY SMOKERS AT LEAST A 20-FOLD
15 RISK.
16 ITEM. CIGARETTE SMOKING IS

17 THE MOST IMPORTANT OF THE CAUSES OF
18 BRONCHITIS IN THE UNITED STATES TODAY AND
19 INCREASES THE RISK OF DYING FROM CHRONIC
20 BRONCHITIS AND EMPHYSEMA.

21 ITEM. IT IS ESTABLISHED THAT
22 MALE CIGARETTE SMOKERS HAVE A HIGHER DEATH
23 RATE FROM CORONARY ARTERY DISEASES THAN
24 NONSMOKING MALES.

25 ITEM. HIGHER MORTALITY OF
26 CIGARETTE SMOKERS IS ASSOCIATED WITH MANY
27 OTHER CARDIOVASCULAR DISEASES, INCLUDING
28 MISCELLANEOUS CIRCULATORY DISEASES, HEART

7181

1 DISEASES, HYPERSENSITIVE HEART DISEASE, AND
2 GENERAL ARTERIOSCLEROSIS.

3 ITEM. PIPE SMOKING APPEARS TO
4 BE CAUSALLY RELATED TO LIP CANCER.

5 ITEM. CIGARETTE SMOKING IS A
6 SIGNIFICANT FACTOR IN THE CAUSATION OF
7 CANCER OF THE LARYNX.

8 NOW, THE THINGS LEFT UNSAID.

9 THE REPORT DOES NOT SAY WHAT
10 IT IS IN THE TOBACCO SMOKE THAT CAUSES LUNG
11 CANCER.

12 IT DOES NOT SAY THAT THERE IS
13 A PROVEN CAUSAL LINK BETWEEN SMOKING AND
14 HEART DISEASE. IN OTHER WORDS, THE
15 CONCLUSIONS REGARDING HEART DISEASE ARE
16 REACHED BY STATISTICAL EVIDENCE.

17 NEVERTHELESS, THE REPORT IS AN
18 INDICTMENT OF CIGARETTE SMOKING AND WILL
19 DOUBTLESS HAVE AN EFFECT ON THE TOBACCO
20 INDUSTRY AND ON THOSE PERSONS WHO NOW SMOKE.

21 THE REPORT WAS HANDED TO
22 REPORTERS AT THE STATE DEPARTMENT AUDITORIUM
23 WHERE PRESIDENT KENNEDY IS TO HOLD HIS
24 TELEVISION NEWS CONFERENCES AT 9:30 THIS
25 MORNING. THEY WERE LOCKED IN THERE TO STUDY
26 THE REPORT. AT 11 O'CLOCK, A NEWS
27 CONFERENCE WAS STARTED WITH U.S. SURGEON
28 GENERAL LUTHER L. TERRY GIVING THE OPENING

7182

1 STATEMENT.

2 Q. BY MR. GARDNER: DR. POLLAY --

3 A. YES.

4 Q. -- THAT WAS JUST A CLIP FROM A ONE-HOUR NEWS
5 PROGRAM THAT WAS AIRED ON NBC AT THAT TIME, WASN'T IT?

6 A. I HAVE TO TAKE YOUR ASSERTION TO THAT POINT.

7 Q. THE MESSAGE THAT WE JUST HEARD WAS CONSISTENT
8 WITH THE OTHER MESSAGES FROM OTHER NEWS SOURCES THAT WERE IN
9 THE INFORMATION ENVIRONMENT AT THAT TIME?

10 A. YEAH. ON THAT DAY OR TWO, FOR SURE, THERE
11 WOULD HAVE BEEN A MAJOR STORY IN THAT -- AT THAT POINT IN
12 TIME.

13 Q. OKAY. YOU HAVEN'T DONE A SYSTEMATIC STUDY OF
14 ALL OF THE INFORMATION THAT WAS OUT THERE RELATING TO SMOKING
15 AND HEALTH, HAVE YOU?

16 A. I HAVEN'T GENERATED STATISTICS ON THAT. BUT I
17 REVIEWED BOXES OF REPRINTS OF ARTICLES THAT HAVE BEEN
18 PRODUCED IN LITIGATION.

19 Q. BUT YOU HAVEN'T DONE A SYSTEMATIC STUDY OF
20 EVERY ARTICLE OR EVERY NEWS PROGRAM THAT ADDRESSED THE ISSUES
21 OF SMOKING AND HEALTH, HAVE YOU?

22 A. THAT'S CORRECT.
23 Q. BUT IF YOU REALLY WANTED TO ASSESS THE
24 INFORMATION ENVIRONMENT, THAT WOULD BE -- IN OTHER WORDS, ALL
25 OF THE PROGRAMS AND ARTICLES FROM THE NEWSPAPERS AND
26 MAGAZINES AND TELEVISION NEWS ABOUT SMOKING AND HEALTH, IF
27 YOU REALLY WANTED TO UNDERSTAND THE INFORMATION ENVIRONMENT
28 AS IT PERTAINED TO THIS SUBJECT, THAT KIND OF A STUDY WOULD

7183

1 BE USEFUL, WOULDN'T IT?

2 A. IT WOULD BE USEFUL. BUT EVEN WITHOUT A STUDY,
3 YOU KNOW THAT THE BULK OF THE TELEVISION PROGRAMMING IS
4 ADDRESSING OTHER QUESTIONS.

5 Q. BUT AGAIN, MY QUESTION WAS: IF YOU WERE
6 LOOKING AT THE ISSUE OF SMOKING AND HEALTH AND THAT
7 INFORMATION ENVIRONMENT, A COMPLETE STUDY OF ALL OF THE NEWS
8 ARTICLES, MAGAZINE ARTICLES, TELEVISION NEWS PROGRAMS WOULD
9 BE A USEFUL TOOL, WOULDN'T IT, DR. POLLAY?

10 A. SURE. I MEAN, A COMPLETE CENSUS OF ALL OF IT,
11 OF COURSE, WOULD BE USEFUL.

12 Q. ARE YOU AWARE, DR. POLLAY, THAT MR. RELLER
13 STARTED SMOKING PHILIP MORRIS' BECAUSE OF THE SURGEON
14 GENERAL'S REPORT?

15 A. I KNEW THAT HE SWITCHED TO FILTERS AT ABOUT THE
16 TIME. I DIDN'T KNOW THAT IT WAS ATTRIBUTED SPECIFICALLY TO
17 THE SURGEON GENERAL'S REPORT.

18 Q. YOU DIDN'T THINK THAT'S HIS TESTIMONY IN THIS
19 CASE?

20 A. I KNEW JUST -- I JUST RECALL THAT HE HAD
21 SWITCHED AT THAT -- AT THE TIME OF THE SURGEON GENERAL
22 REPORT.

23 Q. DID YOU KNOW THAT MR. RELLER'S TESTIMONY IN
24 THIS CASE ABOUT WHY HE SWITCHED TO MARLBOROS HAD NOTHING TO
25 DO WITH ADVERTISEMENTS?

26 A. NO.

27 Q. DID YOU KNOW THAT MR. RELLER'S TESTIMONY IN
28 THIS CASE, THAT HIS SWITCH FROM MARLBOROS TO BENSON & HEDGES,

7184

1 HE TESTIFIED THAT THAT HAD NOTHING TO DO WITH ADVERTISEMENTS?

2 A. I'M NOT AWARE OF THAT.

3 Q. ARE YOU AWARE THAT MR. RELLER TESTIFIED THAT
4 THERE'S NO EVIDENCE THAT MR. RELLER WAS INFLUENCED AT ALL BY
5 CIGARETTE ADVERTISING IN ANY OF HIS DECISIONS TO START
6 SMOKING OR TO SWITCH BRANDS?

7 A. I'M SORRY. I LOST IT IF THERE'S A QUESTION
8 THERE.

9 I HEARD A STATEMENT, BUT I WASN'T SURE I HEARD
10 THE QUESTION.

11 Q. YOU'RE NOT AWARE OF ANY EVIDENCE FROM
12 MR. RELLER, FROM HIS TESTIMONY, THAT ANY OF HIS DECISIONS TO
13 START SMOKING HAD ANYTHING TO DO WITH ADVERTISEMENTS?

14 A. THAT'S CORRECT.

15 Q. YOU'RE NOT AWARE OF ANY EVIDENCE FROM
16 MR. RELLER'S TESTIMONY THAT HE SWITCHED TO MARLBOROS BECAUSE
17 OF ADVERTISING?

18 A. THAT'S CORRECT.

19 Q. AND YOU'RE NOT AWARE OF ANY EVIDENCE THAT ANY
20 TIME ALONG THE WAY HIS DECISION NOT TO QUIT SMOKING WAS BASED
21 ON ADVERTISEMENTS, ARE YOU?

22 A. THAT'S CORRECT.

23 Q. AND YOU CAN'T TESTIFY FOR THIS JURY ABOUT WHAT
24 MR. RELLER PERSONALLY, AS AN INDIVIDUAL, SAW OR HEARD
25 RELATING TO THE ISSUES OF SMOKING AND HEALTH, CAN YOU?

26 A. THAT'S CORRECT.

27 Q. YOU'RE NOT AWARE AND YOU DON'T HAVE ANY
28 EVIDENCE FOR THIS JURY THAT MR. RELLER EVER SAW OR HEARD
7185
1 ANYTHING THAT PHILIP MORRIS SAID, ARE YOU?
2 A. THAT'S CORRECT.
3 Q. YOU'RE NOT AWARE OF ANY EVIDENCE THAT
4 MR. RELLER SAW ANY OF THE PRESS RELEASES THAT WE SAW
5 YESTERDAY, ARE YOU?
6 A. DIDN'T EVEN OCCUR TO ME THAT THAT QUESTION
7 WOULD COME UP, BECAUSE THE PRESS RELEASES AREN'T DIRECTED TO
8 HIM.
9 Q. AND YOU'RE NOT AWARE OF ANY EVIDENCE THAT
10 MR. RELLER EVER SAW THE FRANK STATEMENT, ARE YOU?
11 A. THAT'S CORRECT.
12 Q. AND BECAUSE YOU'RE NOT AWARE OF MR. RELLER
13 SEEING OR HEARING ANY OF THESE STATEMENTS, YOU DON'T HAVE ANY
14 EVIDENCE FOR THIS JURY THAT MR. RELLER RELIED ON ANY OF THAT
15 EVIDENCE, DO YOU?
16 A. ON THESE STATEMENTS, THAT'S CORRECT.
17 MR. RELLER SPEAKS FOR ITSELF.
18 MR. GARDNER: THANK YOU, YOUR HONOR. THAT'S ALL I
19 HAVE.
20 THE COURT: THANK YOU VERY MUCH.
21 MR. PIUZE, THE CLOCK'S TICKING.
22
23 REDIRECT EXAMINATION
24 BY MR. PIUZE:
25 Q. DOES THE FACT THAT MR. RELLER DOESN'T ATTRIBUTE
26 SWITCHING BRANDS TO MARLBORO MEAN HE WASN'T INFLUENCED BY
27 PHILIP MORRIS' ADS?
28 A. NO, IT DOES NOT.
7186
1 MR. GARDNER: OBJECTION, YOUR HONOR. CALLING FOR
2 SPECULATION AS TO WHAT MR. RELLER THOUGHT.
3 THE COURT: SUSTAINED AS IT'S CURRENTLY PHRASED.
4 Q. BY MR. PIUZE: DO GOOD ADS WORK IN SUCH A WAY
5 THAT THE CONSUMERS DON'T EVEN KNOW SOMETIMES THAT THEY'RE
6 BEING INFLUENCED BY THE ADS?
7 A. THEY DO.
8 Q. I MEAN, ISN'T THAT WHAT GOOD ADVERTISING'S ALL
9 ABOUT?
10 A. YES. THAT WAS LONG AGO SAID, THE ART OF
11 ADVERTISING IS INSTRUCTING THE CONSUMER AND THEN HELPING THE
12 CONSUMER FORGET WHERE THEY RECEIVED THEIR INSTRUCTIONS.
13 Q. SO IF YOU WERE UP THERE TEACHING ADVERTISING
14 AND MARKETING TO SOME WOULD-BE PHILIP MORRIS ADVERTISERS IN
15 CASE THEY WANT TO ADVERTISE IN THE FUTURE, YOU WOULDN'T TELL
16 THEM THEY SHOULD GET DEMERITS BECAUSE THE PEOPLE WHO SWITCH
17 TO PHILIP MORRIS BRAND DON'T REMEMBER WHICH COMMERCIALS THEY
18 SAW?
19 A. THAT'S CORRECT.
20 Q. YOU REMEMBER A COUPLE OF QUESTIONS ABOUT
21 PHILIP MORRIS BREAKING FROM THE PACK ON THE SMOKING AND
22 HEALTH ADS OF THE 1953?
23 REMEMBER THAT?
24 A. YES.
25 MR. PIUZE: YOUR HONOR, WHAT'S THE NEXT NUMBER HERE,
26 PLEASE?
27 THE COURT: 188, AND THAT'S YOURS.
28 WHAT IS 188 GOING TO BE?
7187
1 MR. PIUZE: 188 AND 189 ARE PHILIP MORRIS ADS FROM
2 1953.

3 THE COURT: BOTH OF THEM? BOTH FROM 1953?
4 MR. PIUZE: 188 IS FROM 1953. 189 IS UNDATED. I'LL
5 ASK THE WITNESS.
6 THE COURT: ALL RIGHT. THANK YOU.
7 MR. PIUZE: ALL RIGHT
8
9 (I.D. 188 - 1953 PHILIP MORRIS AD)
10 (I.D. 189 - UNDATED PHILIP MORRIS AD)
11
12 Q. BY MR. PIUZE: ANYWAY, DID YOU OR THE ARTICLE
13 THAT YOU'VE BEEN DISCUSSING THAT YOU READ EVER SAY THAT EVERY
14 SINGLE AD FROM EVERY SINGLE MANUFACTURER CONTAINED THESE
15 ELEMENTS?
16 A. NO. NOR THAT EVERY SINGLE AD INSTANTLY STOPPED
17 CONTAINING THOSE ELEMENTS.
18 I MEAN, THE DATA WAS GATHERED TO BE ABLE TO MAP
19 HOW THAT CHANGE WAS TAKING PLACE OVER TIME ON A FIRM-BY-FIRM
20 BASIS.
21 Q. HERE IS -- CAN'T SEE THE NUMBER YET. I MARKED
22 IT 183. BUT I WANT TO --
23 THE COURT: 183?
24 I'VE GOT IT 188.
25 MR. PIUZE: EXCUSE ME. I'M WRONG. 188.
26 Q. THE 3 THAT I'VE GOT IN MY MIND, I THINK, IS
27 THERE ON THE AD.
28 DO YOU SEE THAT?
7188
1 CAN YOU SEE THAT DATE?
2 A. YES. YOU'RE ASKING ME?
3 Q. YES.
4 A. 1953.
5 Q. FALL?
6 A. YES.
7 Q. SO IS THIS THE KIND OF AN AD, I GUESS, WHERE
8 PHILIP MORRIS DIDN'T BREAK FROM THE PACK, AND THEY WERE STUCK
9 ON THE NEGATIVITY OF HEALTH TOWARDS TOBACCO?
10 A. YEP. JUST LIKE THE EXAMPLE WE SAW YESTERDAY,
11 STILL TALKING --
12 THE COURT: AWE, AWE. DON'T VOLUNTEER.
13 Q. BY MR. PIUZE: DIGEL, RIGHT?
14 A. YES.
15 Q. THIS ONE DOESN'T HAVE A DATE AT THE BOTTOM OF
16 IT. CAN YOU GIVE US YOUR OPINION IF THIS IS FROM THE SAME
17 APPROXIMATE TIME, RIGHT HERE?
18 A. YES. I WOULD PLACE IT VERY CLOSE IN TIME.
19 IT'S THE SAME CAMPAIGN, JUST A SLIGHTLY DIFFERENT EXECUTION;
20 A FEMALE INSTEAD OF A MALE.
21 Q. OKAY. THANKS.
22 SO DID THE BUSINESS -- THE TRADE PRESS AT THE
23 TIME, MEANING THE ADVERTISING PRESS, ONE OF WHICH -- AN
24 EXAMPLE OF WHICH YOU SAW, DISCUSS IN ADVANCE THAT THE
25 CIGARETTE COMPANIES WERE SHOOTING THEMSELVES IN THE FOOT BY
26 CONCENTRATING ON THESE ISSUES?
27 A. THEY DID, USING THAT VERY AD AS THE EXAMPLE.
28 Q. AND HAD R.J. REYNOLDS STARTED THE TREND AWAY
7189
1 FROM THOSE ADS?
2 A. THEY DID.
3 Q. DO YOU WANT TO CHANGE THE OPINIONS YOU GAVE US
4 YESTERDAY THAT THE INDUSTRY, ON A DIME, BASICALLY TURNED
5 AROUND THOSE ADS?
6 A. NO. I GUESS THE ONLY CLARIFICATION IS THAT THE
7 PACK WAS LED BY R.J. REYNOLDS, SO THEY DIDN'T ALL JUST

8 INSTANTLY TURN THE SAME DIRECTION AT EXACTLY THE SAME TIME.
9 THERE WAS -- THE WAY WAS PAVED BY R.J. REYNOLDS' EXAMPLE.
10 Q. DO YOU WANT TO CHANGE YOUR OPINION FROM
11 YESTERDAY THAT LIGGETT & MYERS, THE ONLY ONE THAT WASN'T A
12 MEMBER OF THE TIRC, STOOD THE COURSE LONGER THAN THE OTHERS?
13 A. NO. I HAVE NO REASON TO CHANGE MY TESTIMONY.
14 Q. THANKS.
15 HERE WAS SOME NEW STUFF THAT WE HEARD WITH
16 MR. GARDNER FOR THE FIRST TIME TODAY.
17 IN THE 1940S, WAS THE FEDERAL TRADE COMMISSION
18 AFTER THE CIGARETTE INDUSTRY IN AMERICA FOR FALSE AND
19 MISLEADING ADS?
20 A. THEY WERE.
21 Q. AND DID THE CIGARETTE INDUSTRY IN AMERICA
22 SUCCESSFULLY KEEP THEM AT BAY FOR ABOUT TEN YEARS AS THIS
23 THING WENT ON BETWEEN THE FEDERAL TRADE COMMISSION AND THE
24 AMERICAN TOBACCO INDUSTRY?
25 MR. GARDNER: YOUR HONOR, I'M GOING TO OBJECT. CALLS
26 FOR SPECULATION. NO FOUNDATION.
27 THE COURT: HE BROUGHT IT UP EARLIER DURING YOUR
28 CROSS. IT CAME OUT THEN. OVERRULED.
7190
1 THE WITNESS: YES. THOSE THAT WERE ULTIMATELY FOUND
2 GUILTY WAS, ON THE AVERAGE, ABOUT A DECADE LATER, AND THE
3 JUDGMENTS APPLIED TO THE CAMPAIGNS THAT HAD BEEN RUN IN THE
4 PRECEDING DECADE. AND THE ADVERTISING PRACTICES HAD MOVED ON
5 TO NEWER CAMPAIGNS.
6 Q. BY MR. PIUZE: SO BY THE TIME THE FTC FINALLY
7 GOT TO THE TOBACCO INDUSTRY, ABOUT THOSE ADS FROM TEN YEARS
8 AGO, THOSE ADS WERE HISTORY ANYWAY?
9 A. THEY WERE.
10 MR. GARDNER: YOUR HONOR --
11 THE COURT: YES.
12 MR. GARDNER: -- CALLS FOR SPECULATION ABOUT THE
13 LEGAL PROCESS. OUTSIDE THIS WITNESS' SCOPE.
14 THE COURT: ALL RIGHT. SUSTAINED ON THAT GROUND.
15 Q. BY MR. PIUZE: WHETHER IT WAS FROM THE TRADE
16 PRESS AND/OR THE BETTER BUSINESS BUREAU OR A CHANGE OF HEART
17 AND CONSCIENCE OR FROM HILL & KNOWLTON AND THE TIRC, DID THE
18 AMERICAN TOBACCO INDUSTRY, EXCEPT FOR LIGGETT & MYERS,
19 BASICALLY TURN ITS AD CAMPAIGN AROUND IN AN EXTREMELY BRIEF
20 PERIOD OF TIME SO THAT SMOKERS WOULDN'T HAVE ANY -- HAVE TO
21 ANYMORE LOOK AT THINGS THAT REMINDED THEM OF SICKNESS?
22 A. THEY DID. THEY TOOK THE FEAR OUT OF THE
23 ADVERTISING.
24 Q. THE SURGEON GENERAL'S REPORT CAME OUT ON
25 1-11-64.
26 DO YOU KNOW WHAT DAY OF THE WEEK THAT WAS?
27 A. SATURDAY, I BELIEVE.
28 Q. ISN'T SATURDAY USUALLY A SLOW NEWS DAY?
7191
1 A. YES.
2 Q. DID I HEAR YOU SAY YOU DIDN'T BELIEVE THE
3 SURGEON GENERAL'S REPORT WAS ONE OF THE TOP TEN STORIES OF
4 THE YEAR IN 1964?
5 A. YOU DID.
6 Q. JUST A LITTLE HISTORY QUESTION, BUT ON
7 JANUARY 11TH, 1964, IS THAT SOMETHING LIKE 40 OR 45 DAYS
8 AFTER PRESIDENT KENNEDY HAD BEEN ASSASSINATED?
9 A. YES.
10 Q. WERE WE ABOUT TO GO INTO ANOTHER PHASE OF A
11 LITTLE WAR IN VIETNAM?
12 A. YES.

13 Q. A LOT OF IMPORTANT THINGS HAPPENING BESIDES THE
14 SURGEON GENERAL RELEASING THE REPORT ON A SATURDAY?

15 A. A LOT OF WHAT ARE CALLED SUSTAINING OR
16 CONTINUING STORIES, LIKE THE ASSASSINATION AND WARREN
17 COMMISSION, LIKE THE VIETNAM WAR.

18 Q. THE 1964 SURGEON GENERAL REPORT THAT WE JUST
19 HEARD SAID SMOKING CAUSED LUNG CANCER, HUH?

20 A. YES.

21 Q. 1959 SURGEON GENERAL REPORT SAID SMOKING CAUSED
22 LUNG CANCER?

23 MR. GARDNER: OBJECTION, YOUR HONOR.

24 THE COURT: THIS WITNESS DOESN'T --

25 MR. PIUZE: I'M SORRY.

26 THE COURT: YOU HAVEN'T SHOWN THAT THIS WITNESS HAS
27 THE BACKGROUND TO MAKE THAT STATEMENT. IF HE'S REACHED IT,
28 FINE, IF YOU WANT TO LAY THAT, BUT RIGHT NOW, HE'S NOT GOING

7192
1 TO ANSWER IT.

2 MR. PIUZE: WELL, YOUR HONOR, THAT WAS THE ONE WE
3 SHOWED THIS MORNING. THAT WAS --

4 Q. DR. BURNEY FROM THE U.S. PUBLIC HEALTH SERVICE,
5 1959, SURGEON GENERAL, HEAD OF THE U.S. PUBLIC HEALTH
6 SERVICE, CIGARETTES CAUSE LUNG CANCER?

7 A. IN AN ARTICLE PUBLISHED IN JAMA, THE JOURNAL OF
8 AMERICAN MEDICAL ASSOCIATION.

9 Q. YOU AGREED, I THINK, THAT THE SURGEON GENERAL'S
10 REPORT OF 1964 MIGHT HAVE BEEN THE BIGGEST HEALTH STORY OF
11 THE CENTURY.

12 REMEMBER THAT?

13 A. YES.

14 Q. OKAY. ARE YOU SURE THAT THE BIGGEST HEALTH
15 STORY OF THE 20TH CENTURY WASN'T SOMETHING ABOUT TEQUILA?

16 A. I'M SURE IT WASN'T ABOUT TEQUILA. THERE ARE
17 OTHER MAJOR HEALTH STORIES, BUT NOT ONE THAT I'M AWARE OF
18 CONCERNING TEQUILA.

19 Q. WELL, VODKA?

20 A. NO.

21 Q. BUDWEISER?

22 A. NOT THAT I'M AWARE.

23 Q. MAYBE THE BIGGEST 20TH CENTURY HEALTH STORY WAS
24 ABOUT THAT CHIHUAHUA AND THE TACO BELL COMMERCIAL.

25 WHAT DO YOU THINK?

26 A. DON'T THINK SO.

27 Q. MC DONALD'S?

28 A. NOT THAT I'M AWARE.

7193
1 Q. THIS IS LEFT OVER FROM LAST WEEK.
2 COCA-COLA?

3 A. NO.

4 Q. DEADLY AND ADDICTIVE CIGARETTES AREN'T
5 COCA-COLA OR TACO BELL OR MC DONALD'S, ARE THEY?

6 MR. GARDNER: YOUR HONOR, OUTSIDE THE SCOPE OF THIS
7 WITNESS' EXPERTISE.

8 THE COURT: I ASSUME YOU'RE TALKING ABOUT FROM THE
9 USUAL FUND OF KNOWLEDGE THAT THE AVERAGE PERSON HAS.

10 IS THAT RIGHT?

11 MR. PIUZE: YES.

12 THE COURT: OVERRULED.

13 THE WITNESS: THAT'S CORRECT. THERE'S QUITE A
14 DIFFERENCE.

15 Q. BY MR. PIUZE: AND THE BIGGER THE DIFFERENCE IN
16 THE HEALTH RISK, THE ADDICTIVENESS AND THE DEADLINESS OF THE
17 PRODUCT, WOULD YOU SAY THAT PLAY'S SOME ROLE IN HOW BIG THE

18 LEADING COMPONENT IS IN THE ADVERTISING?
19 MR. GARDNER: YOUR HONOR, SPECULATION. OUTSIDE THIS
20 WITNESS' EXPERTISE.
21 THE COURT: SUSTAINED. I THINK THAT'S UP TO THE JURY
22 TO DECIDE, MR. PIUZE.
23 MR. PIUZE: EXCUSE ME?
24 THE COURT: SUSTAINED.
25 Q. BY MR. PIUZE: ANYWAY, SIMPLY BECAUSE THE
26 SURGEON GENERAL'S REPORT OF 1964 MIGHT HAVE BEEN THE LARGEST
27 HEALTH STORY OF THE ENTIRE 20TH CENTURY BECAUSE -- JUST
28 BECAUSE THIS OTHER STUFF THAT WAS MENTIONED HERE THIS
7194

1 AFTERNOON WASN'T, DOES THAT PLAY ANY ROLE IN YOUR THINKING
2 ABOUT HOW MISLEADING ADS ARE?

3 A. YES.
4 MR. PIUZE: AND I'VE GOT NO FURTHER QUESTIONS.
5 THE COURT: MR. GARDNER.
6

7 RECROSS-EXAMINATION
8 BY MR. GARDNER:
9 Q. JUST A COUPLE OF QUESTIONS, DR. POLLAY. OKAY.
10 ARE YOU FAMILIAR WITH THIS AD?
11 THE COURT: I DON'T THINK -- HAVE WE SEEN THIS ONE
12 YET?

13 HAS IT BEEN MARKED?
14 MR. GARDNER: NO, IT HASN'T. I NEED A NUMBER,
15 YOUR HONOR.
16 THE COURT: OKAY. 190.
17 MR. GARDNER: 190.
18 THE COURT: AND HELP ME. IT'S AN AD FOR?
19 MR. GARDNER: MARLBORO CIGARETTES.
20 THE COURT: AND DO YOU HAVE AN APPROXIMATE TIME FOR
21 IT?
22 MR. GARDNER: YEAH. 1953.
23 THE COURT: THANK YOU.
24

25 (I.D. 190 - 1953 MARLBORO AD)
26
27 Q. BY MR. GARDNER: 1953, RIGHT, DR. POLLAY?
28 A. YES. NEWSPAPERS.

7195
1 Q. OKAY. LET'S GO BACK OUT.
2 CAN YOU READ THAT AD, DR. POLLAY?
3 A. YES.
4 Q. IT'S A 1953 AD BEFORE THE INVOLVEMENT OF
5 HILL & KNOWLTON AND THE TIRC, RIGHT?

6 A. YES.
7 Q. DO YOU SEE ANYTHING ABOUT THROAT SCRATCH IN
8 THAT AD?
9 A. WELL, I'D HAVE TO REVIEW THE ENTIRE AD. BUT I
10 TAKE IT BECAUSE YOU'RE PRESENTING IT TO ME THAT IT DOESN'T
11 SAY THAT.

12 Q. OKAY. AND THAT'S MARLBORO; THAT'S
13 PHILIP MORRIS, RIGHT?
14 A. THAT'S CORRECT. BEFORE THEY MADE THE MARLBORO
15 MALE.

16 Q. DO YOU RECOGNIZE THIS AD, DR. POLLAY?
17 A. NO. BUT I'VE SEEN OTHER ADS.
18 THE COURT: WOULD YOU LIKE A NUMBER?
19 THAT'S GOING TO BE 191.
20 MR. GARDNER: YES, YOUR HONOR.
21 THE COURT: AND THAT'S A PHILIP MORRIS AD?
22 MR. GARDNER: IT IS, YOUR HONOR.

23 THE COURT: IT JUST DISAPPEARED.
24 YOU'RE PUTTING IT BACK NOW.
25 MR. GARDNER: IT IS. I HAD TO PUT THE NUMBER ON IT.
26 THE COURT: OKAY.
27
28 (I.D. 191 - PHILIP MORRIS AD)
7196
1 Q. BY MR. GARDNER: DO YOU SEE THE DATE ON THE
2 BOTTOM THERE, DR. POLLAY?
3 A. YES. TOBACCO TRADE, AUGUST, 1953.
4 Q. ANYTHING ABOUT HEALTH SCRATCH ON THERE -- OR
5 THROAT SCRATCH -- EXCUSE ME.
6 A. THIS IS NOT AN AD DIRECTED TO CONSUMERS. THIS
7 IS AN AD DIRECTED TO THE TOBACCO TRADE, THANKING THEM AS
8 DEALERS AND DISTRIBUTORS.
9 Q. SO I TAKE IT THERE'S NOTHING ABOUT THROAT
10 SCRATCH ON THERE?
11 A. I DON'T THINK THE DEALERS AND DISTRIBUTORS,
12 THAT'S THEIR CONCERN.
13 MR. GARDNER: THAT'S ALL I'VE GOT. THANK YOU.
14 THE COURT: MR. PIUZE. YOU'RE DONE?
15 MR. PIUZE: I'M DONE.
16 THE COURT: MR. PIUZE, MAY THIS WITNESS BE EXCUSED?
17 MR. PIUZE: YES.
18 THE COURT: MR. GARDNER?
19 MR. GARDNER: YES, YOUR HONOR.
20 THE COURT: THANK YOU VERY MUCH. YOU'RE EXCUSED.
21 MAKE SURE YOU DON'T TAKE ANY -- OH, BOY -- EXHIBITS WITH YOU.
22 THE WITNESS: I DON'T HAVE ANY.
23 THE COURT: YOU DON'T HAVE ANY. OKAY.
24 MR. PIUZE: I'VE GOT A WITNESS.
25 THE COURT: OKAY. AND YOUR WITNESS IS?
26 MR. PIUZE: DR. MICHAEL CUMMINGS.
27 THE COURT: DR. CUMMINGS, IF YOU'LL COME OVER HERE,
28 STAND BEHIND THE REPORTER AND FACE THE CLERK, I'D APPRECIATE
7197
1 IT.
2 FACE THE CLERK OVER HERE.
3
4 KENNETH MICHAEL CUMMINGS ,
5 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN FIRST DULY
6 SWORN, TESTIFIED AS FOLLOWS:
7 THE CLERK: THANK YOU. PLEASE BE SEATED.
8 SIR, PLEASE STATE AND SPELL YOUR NAME FOR THE
9 RECORD.
10 THE WITNESS: MY NAME IS KENNETH MICHAEL CUMMINGS,
11 AND IT'S SPELLED C-U-M-M-I-N-G-S.
12 THE COURT: MR. PIUZE.
13
14 DIRECT EXAMINATION
15 BY MR. PIUZE:
16 Q. GOOD AFTERNOON.
17 A. GOOD AFTERNOON.
18 Q. WHAT'S YOUR OCCUPATION, PLEASE?
19 A. I'M A RESEARCH SCIENTIST AT ROSSWELL PARK
20 CANCER INSTITUTE. MY BACKGROUND IS ACTUALLY IN THE AREA OF
21 HEALTH BEHAVIOR.
22 Q. OKAY. THANKS.
23 YOU KNOW THE MAN THAT JUST LEFT HERE?
24 A. YES, I DO.
25 Q. A LITTLE WHILE AGO, WE HEARD THAT
26 PROFESSOR POLLAY DONATED AT LEAST PART OF HIS ARCHIVES ON
27 CIGARETTE ADVERTISING TO SOMEPLACE CALLED ROSSWELL PARK.

28 DO YOU KNOW WHAT ROSSWELL PARK IS?
7198
1 A. YES. IT'S WHERE I WORK.
2 Q. SO WHERE'S ROSSWELL PARK?
3 A. ROSSWELL PARK IS IN BUFFALO, NEW YORK.
4 Q. WHAT IS ROSSWELL PARK?
5 A. IT'S A COMPREHENSIVE CANCER CENTER. IN FACT,
6 IT'S THE OLDEST FREESTANDING CANCER CENTER IN THE UNITED
7 STATES.
8 Q. AND THAT WOULD BE FREESTANDING BACK TO WHEN,
9 PLEASE?
10 A. I THINK WE'RE NOW 102 YEARS OLD.
11 Q. WELL, CONGRATULATIONS.
12 HOW LONG HAVE YOU BEEN ASSOCIATED WITH
13 ROSSWELL PARK CANCER CENTER?
14 A. 22 YEARS.
15 Q. SO IF MY MATH'S RIGHT, WE'RE TALKING '81 OR SO?
16 A. CORRECT.
17 Q. WHAT'S YOUR TITLE OR TITLES AT ROSSWELL PARK?
18 A. I'M CURRENTLY THE CHAIRMAN OF THE DEPARTMENT OF
19 HEALTH BEHAVIOR, WHICH IS LOCATED IN A DIVISION OF CANCER
20 PREVENTION AND POPULATION SCIENCE. ALSO, THE DIRECTOR OF OUR
21 HOSPITAL'S SMOKING CESSATION PROGRAM.
22 Q. HOW LONG HAVE YOU BEEN INVOLVED WITH THE
23 HOSPITAL SMOKING CESSATION PROGRAM?
24 A. I'VE BEEN INVOLVED WITH THAT FOR ABOUT 21 OF MY
25 22 YEARS.
26 Q. AND HOW LONG HAVE YOU BEEN THE DIRECTOR OF THE
27 SMOKING CESSATION PROGRAM?
28 A. 21 YEARS.
7199
1 Q. WHY DON'T YOU GIVE US SOME IDEA OF THE
2 ROSSWELL PARK SMOKING CESSATION PROGRAM?
3 A. WELL, THE PRACTICE CONSISTS OF ITS RUNNING
4 CLINICS ON A MONTHLY BASIS. SINCE I STARTED THE PROGRAM
5 21 YEARS AGO, I'VE PROBABLY SEEN OVER 10,000 PEOPLE THROUGH
6 OUR CLINIC. WE RUN THEM EVERY MONTH, AND SOMETIMES MORE THAN
7 ONCE A MONTH.
8 WE ALSO, AS PART OF THAT PROGRAM, RUN A
9 TELEPHONE INFORMATION SERVICE FOR THE STATE OF NEW YORK. WE
10 HAVE A CONTRACT WHICH WE RAN FOR THE NEW YORK STATE SMOKERS
11 QUIT LINE. THE QUIT LINE RECEIVES HUNDREDS OF THOUSANDS OF
12 CALLS. IN FACT, JUST IN THE LAST SIX WEEKS, WE DID A SPECIAL
13 PROGRAM WITH THE NEW YORK CITY HEALTH DEPARTMENT, OFFERING
14 FREE NICOTINE MEDICATIONS TO PEOPLE TO QUIT SMOKING. WE
15 RECEIVED OVER 400,000 CALLS.
16 THE FIRST TIME I'VE HAD A TELEPHONE CALL, MCI
17 CALLED US AND ASKED US TO DO SOMETHING TO STOP IT. WE WERE
18 SORT OF SHUTTING DOWN THE PHONE SYSTEM A BIT. BUT WE WERE
19 REGISTERING PEOPLE INTO THAT PROGRAM, AND WE ACTUALLY
20 REGISTERED 35,000 PEOPLE WITHIN A VERY SHORT PERIOD OF TIME
21 INTO A PROGRAM THAT WE'RE NOW WORKING WITH AND CALLING THOSE
22 PEOPLE BACK TO HELP THEM STOP SMOKING.
23 Q. SO BACK -- SO WOULD YOU SAY THAT YOUR SMOKING
24 CESSATION PROGRAM AT ROSSWELL PARK IS A BIG ONE?
25 A. YES. I THINK IT'S CERTAINLY THE LARGEST IN
26 NEW YORK STATE THAT I'M AWARE OF. AND WE DO RESEARCH AROUND
27 OUR PROGRAM. WE DO A LOT OF TRAINING IN ADDITION TO HEALTH
28 PROFESSIONALS. WE DO A LOT OF TALKING TO DOCTORS, NURSES,
7200
1 PHARMACISTS.
2 I DO A LOT OF PUBLIC SPEAKING. I'LL GO OUT AND
3 TALK TO SCHOOL CHILDREN. I USUALLY DO MAYBE 20 LECTURES A

4 YEAR TO SCHOOL CHILDREN ABOUT THE HEALTH EFFECTS OF SMOKING.
5 SO IT'S NOT JUST SMOKING CESSATION. IT'S A
6 BROAD TOBACCO PREVENTION PROGRAM. THERE ARE OTHER PEOPLE WHO
7 ARE INVOLVED IN RUNNING THAT PROGRAM ALONG WITH ME.

8 Q. THANK YOU.
9 AS FAR AS THE CESSATION PART OF IT IS
10 CONCERNED, PEOPLE WHO ARE ALREADY SMOKING WHO WANT TO STOP
11 SMOKING, DID YOU SAY THAT OVER THE COURSE OF THE YEARS YOU'VE
12 HAD 10,000 PEOPLE THROUGH THERE?

13 A. THAT'S -- YEAH. A ROUGH GUESS AS TO THE NUMBER
14 OF PEOPLE WHO HAVE BEEN THROUGH OUR PROGRAM.

15 Q. SO HAVE 10,000 PEOPLE STOPPED SMOKING?

16 A. I WISH. THE ANSWER'S NO.

17 Q. FIRST OF ALL, THE REASON YOU WISH IS BECAUSE
18 YOU TRULY WISH EVERYONE WOULD STOP SMOKING?

19 A. ABSOLUTELY.

20 Q. AND THE ANSWER IS NO BECAUSE WHAT?

21 A. MOST OF THE PEOPLE THAT COME THROUGH OUR CLINIC
22 WHO WANT TO QUIT, THEY COME TO A CANCER HOSPITAL TO GO TO A
23 CLINIC FAIL. IN OTHER WORDS, THEY GO BACK TO SMOKING.

24 Q. AND WHEN YOU SAY MOST, MOST COVERS A LOT OF
25 TERRITORY. IN FACT, IT COVERS BETWEEN 51 PERCENT AND 100
26 PERCENT.

27 IN YOUR EXPERIENCE, WHAT IS "MOST"?

28 A. WELL, IF YOU TAKE, JUST ON A PERCENTAGE BASIS,

7201
1 IF THE PEOPLE COME INTO OUR CLASS, ALMOST ALL, AROUND
2 90 PERCENT, 9 OUT OF 10, WILL QUIT SMOKING. IN OTHER WORDS,
3 THEY'LL THROW THEIR CIGARETTES INTO THE BIN WHEN WE ASK THEM
4 TO QUIT.

5 A WEEK LATER, WHEN WE GO BACK TO THOSE PEOPLE,
6 WE'RE DOWN TO ABOUT 70 PERCENT WHO ARE STILL OFF OF THE
7 CIGARETTES.

8 A MONTH LATER, ABOUT 50 PERCENT.
9 AND A YEAR LATER, IT'S AROUND 20 PERCENT.
10 AND SO OUR ANNUAL QUIT RATE IS ABOUT

11 20 PERCENT.

12 Q. SO IF YOUR ANNUAL QUIT RATE IS
13 20 PERCENT -- DON'T TAKE THIS THE WRONG WAY -- YOUR ANNUAL
14 FAILURE RATE IS 80 PERCENT?

15 A. THAT'S CORRECT.

16 Q. DO YOU STILL CONSIDER IT A VICTORY THAT YOU GET
17 THE 20 PERCENT?

18 A. YES. WE SAVE LIVES BY GETTING THAT 20 PERCENT
19 TO QUIT.

20 Q. DOES THAT 20 PERCENT THAT HAS QUIT NOW FOR A
21 YEAR, ARE THEY PRETTY MUCH SET AND THEY'RE GOING TO STAY
22 QUIT, OR ARE YOU GOING TO HAVE BACKSLIDERS IN THERE?

23 A. WE HAVE BACKSLIDERS. WE HAVE A NUMBER OF
24 PEOPLE, SINCE WE'VE BEEN RUNNING THE PROGRAM FOR OVER
25 20 YEARS, WHO I USUALLY JOKE, SAYING THEY'RE GETTING A PH.D.
26 IN QUITTING SMOKING BECAUSE THEY'VE BEEN TO THE PROGRAM ON
27 NUMEROUS OCCASIONS.

28 Q. OKAY. NOW, HOW DID YOU BECOME INVOLVED WITH
7202
1 CIGARETTES?

2 AND LET'S STOP THERE.

3 HOW DID YOU BECOME INVOLVED IN CIGARETTES?

4 A. WELL, I WORK AT A CANCER CENTER, AND WE WERE
5 GETTING CALLS FROM PEOPLE CALLING OUR CENTER FOR A PROGRAM.
6 IT SEEMED TO MAKE SENSE THAT A CANCER CENTER OUGHT TO HAVE A
7 STOP SMOKING PROGRAM. THEY DIDN'T.

8 AND I INITIATED THE PROGRAM ALONG WITH A

9 STUDENT WHO WAS WORKING WITH ME. DIDN'T REALLY KNOW THAT
10 MUCH ABOUT IT, TO TELL YOU THE TRUTH, WHEN WE FIRST STARTED.
11 AND THE STUDENT LEFT AND I ENDED UP RUNNING THESE CLASSES.
12 AND IT'S BEEN A LABORATORY FOR BOTH MY RESEARCH AND
13 UNDERSTANDING OF THE TOBACCO PROBLEM, AND I CONTINUE TO DO
14 IT. I ENJOY RUNNING THE CLINICS. PEOPLE ENJOY COMING TO THE
15 PROGRAMS. I THINK WE GIVE GOOD INFORMATION.

16 Q. ALL RIGHT. THANK YOU.

17 IN ADDITION TO HANDS-ON, ONE-ON-ONE, OR 1 ON 20
18 OR 30, HOWEVER MANY -- WE'LL GET TO THAT TOMORROW -- YOU
19 SHOULD STOP SMOKING, IS IT CORRECT THAT YOU AND YOUR STAFF
20 TRAIN PEOPLE, NURSES, DOCTORS AND HEALTH PROFESSIONALS,
21 PSYCHOLOGISTS, I DON'T KNOW, YOU'LL TELL US, YOU TRAIN PEOPLE
22 TO DO THE SAME JOB, YOU TRAIN THEM SO THEY'LL BE ABLE TO HELP
23 OTHER PEOPLE STOP SMOKING?

24 A. YES.

25 Q. HOW LONG HAS THAT BEEN GOING ON, PLEASE?

26 A. I'VE BEEN DOING THAT FOR PROBABLY ALMOST
27 20 YEARS OR SO.

28 Q. HOW LONG DOES IT TAKE TO TRAIN SOMEONE TO TRY

7203

1 TO GET THEM TO STOP SMOKING?

2 A. NOT LONG. USUALLY, I'VE DONE FULL-DAY
3 PROGRAMS, AND I'VE DONE HALF-DAY PROGRAMS. WE'RE ACTUALLY
4 DOING A TRAINING ON THE INTERNET WHERE PEOPLE CAN GO AND GET
5 THE INFORMATION, HOW TO RUN A PROGRAM, AND WE CAN TEST THEM
6 AND GIVE THEM A LITTLE WAY OF DEMONSTRATING. THEY PICKED UP
7 THE BASIC KNOWLEDGE OF HOW TO RUN A CLASS.

8 Q. THAT MAY BE THE LAST WORD YOU SPEAK HERE TODAY.
9 BECAUSE, YOUR HONOR, I'M LOOKING AT ABOUT THREE
10 SECONDS. IS THIS A GOOD TIME?

11 THE COURT: ALL RIGHT. I'LL EVEN STOP YOUR CLOCK.

12 YOU'RE ADMONISHED THAT IT IS YOUR DUTY NOT TO
13 CONVERSE AMONG YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT
14 CONNECTED WITH THIS TRIAL OR TO FORM OR EXPRESS ANY OPINION
15 THEREON UNTIL THE CAUSE IS FINALLY SUBMITTED TO YOU.

16 8:30 FOR THE JURORS.

17 SIR, YOU'RE ORDERED TO RETURN AT 8:30 TOMORROW
18 MORNING.

19 COUNSEL, IF YOU COULD JUST STAY FOR A SECOND,
20 WE'LL GO THROUGH THE EXHIBITS.

21

22 (THE FOLLOWING PROCEEDINGS WERE HELD
23 IN OPEN COURT OUT OF THE PRESENCE
24 OF THE JURY:)

25

26 MR. PIUZE: YOUR HONOR, MAY I GO GET MR. GOLDSTEIN SO
27 HE CAN HELP ME DO THIS?

28 THE COURT: SURE.

7204

1 (SHORT PAUSE.)

2

3 MR. PIUZE: OKAY, YOUR HONOR. THANK YOU.

4 THE COURT: OKAY. IN THE MATTER OF RELLER -- DO I
5 HAVE -- RELLER VERSUS PHILIP MORRIS, BC 261796.

6 WE'RE OUTSIDE THE PRESENCE OF THE JURY.

7 ALL COUNSEL PREVIOUSLY STATED ARE PRESENT.

8 OKAY. WHAT I WANT TO DO IS GO OVER THE

9 EXHIBITS THAT WE DEALT WITH FROM DR. POLLAY.

10 THEY START WITH NO. 115 FROM JUNE 24TH AND GO
11 THROUGH NO. 191.

12 THEY'RE BASICALLY IN A COUPLE OF GROUPS. ONE
13 ARE ADVERTISEMENTS. SOME OF THEM, I GUESS, ARE ARTICLES.

14 SOME OF THE THINGS WE HAVE PARTS OF ALREADY, LIKE THE FRANK
15 STATEMENT BLOWUPS. YOU MAY NOT HAVE THAT PART OF THE BLOWUP
16 EXACTLY. BUT SOME OF THEM ARE KIND OF REPEATS.

17 ALL RIGHT. MR. PIUZE, MR. GARDNER, I HAVE 115
18 AND 116, THE BEFORE AND AFTER CAMEL ADS.

19 ANY OBJECTION TO THOSE?

20 MR. GARDNER: IF I CAN JUST SAY, NONE OTHER THAN
21 PREVIOUSLY STATED. I WOULD SAY THAT, I THINK, FOR THE
22 MAJORITY.

23 THE COURT: THOSE ARE NOTED.

24 AND 115, 116 ARE RECEIVED INTO EVIDENCE, AND
25 YOUR OBJECTIONS ARE RESPECTFULLY OVERRULED.

26
27 (EVID. - 115 AND 116)
28

7205

1 THE COURT: BEFORE AND AFTER CHESTERFIELD ADS, BEFORE
2 AND AFTER PALL MALL ADS, AND THE BEFORE AND AFTER
3 PHILIP MORRIS ADS. THAT GOES FROM 117 THROUGH 123.

4 APART FROM THE OBJECTIONS YOU'VE ALREADY MADE,
5 ANY OTHER OBJECTIONS?

6 MR. GARDNER: NO, YOUR HONOR.

7 THE COURT: THOSE ARE RECEIVED INTO EVIDENCE, 116
8 THROUGH 123, RECEIVED INTO EVIDENCE.

9
10 (EVID. - 117 THROUGH 123)
11

12 THE COURT: OKAY. NOW I'VE GOT 124, CIGARETTE
13 INDUSTRY CLIENT, DECEMBER 15TH, '57, I THINK.

14 MR. GOLDSTEIN: 1953, YOUR HONOR.

15 THE COURT: THIS IS THE STUFF THAT WAS GIVEN TO THE
16 HILL & KNOWLTON -- TO THAT MEETING IN DECEMBER, FOR LACK OF A
17 BETTER DESCRIPTION.

18 MR. PIUZE: YES.

19 THE COURT: ANY OBJECTION?

20 MR. GARDNER: NONE OTHER THAN THOSE PREVIOUSLY
21 STATED.

22 THE COURT: THAT'S NOTED AND OVERRULED.

23 124 IS RECEIVED INTO EVIDENCE.

24
25 (EVID. - 124)
26

27 THE COURT: I'VE GOT THE DECEMBER 24TH, '53
28 PRELIMINARY RECOMMENDATIONS FOR CIGARETTE MANUFACTURERS.

7206

1 THAT'S 125.

2 APART FROM THE OBJECTIONS PREVIOUSLY STATED,
3 ANY OBJECTION, MR. GARDNER?

4 MR. GARDNER: NO, YOUR HONOR.

5 THE COURT: 125 IS RECEIVED INTO EVIDENCE.

6
7 (EVID. - 125)
8

9 THE COURT: 126, 127 AND 128 ARE PARTS OF A FRANK
10 STATEMENT THAT HAVE BEEN BLOWN UP.

11 ANY OBJECTIONS TO THOSE?

12 MR. GARDNER: NO OBJECTIONS, YOUR HONOR. BUT I HAVE
13 A SNEAKING SUSPICION THAT SOME OF THOSE HAVE BEEN MARKED
14 BEFORE, AND I DON'T WANT TO SCREW UP THE COURT'S NUMBERING
15 SYSTEM.

16 THE COURT: OKAY. IT'S MY GOAL TO HAVE IN THE FRANK
17 STATEMENT. AND ONLY TO HAVE ONE COPY OF ANY RELEVANT
18 PORTIONS OF BLOWUPS. I'M NOT GOING TO RULE ON 126 TO 128

19 RIGHT NOW. AND I'M GOING TO LET THE ATTORNEYS FIGURE IT OUT.
20 MAKE SURE THAT WE ONLY HAVE ONE COPY OF ANY PERTINENT PART
21 THAT NEEDS TO BE BLOWN UP. I DON'T HAVE A PROBLEM LETTING
22 THEM IN. I JUST DON'T WANT TO HAVE DOUBLE EMPHASIS.

23 MR. PIUZE: I UNDERSTAND.

24 THE COURT: OKAY. SO REMIND ME TO COME BACK TO
25 126 TO 128.

26 MR. PIUZE: YOUR HONOR, HAVING SAID I UNDERSTOOD, I
27 WAS FAKING THAT. AND I --

28 THE COURT: I JUST WANT TO MAKE SURE WE DON'T HAVE

7207

1 REPEATS OF THE SAME BLOWUPS.

2 MR. PIUZE: I KNOW. I CONFESS. BUT I'D JUST LIKE TO
3 ASK THIS QUESTION HERE.

4 AS AN EXAMPLE, THIS PARTICULAR DOCUMENT, THE
5 FRANK STATEMENT, THERE ARE TWO SEPARATE -- OF COURSE, I CAN'T
6 FIND IT RIGHT NOW BECAUSE -- THERE'S ONLY SIX OF THEM -- BUT
7 THERE'S TWO SEPARATE THOUGHTS. THERE ARE BLOWUPS IN TWO
8 SEPARATE DOCUMENTS.

9 YOU'RE NOT SAYING I CAN'T HAVE THE TWO; I JUST
10 CAN'T HAVE REPEAT OF THE INDIVIDUALS, RIGHT?

11 THE COURT: I DON'T WANT THE SAME DOCUMENT REPEATED.
12 SO IF THE SAME BLOWUP'S REPEATED -- SO IF YOU HAVE THE FRANK
13 STATEMENT THAT'S GOT THE WORDS A, B AND C BLOWN UP TWICE, I
14 JUST WANT YOU TO USE ONE.

15 MR. PIUZE: THANK YOU. I NOW REALIZE I DID
16 UNDERSTAND.

17 THE COURT: AND I DON'T KNOW WHETHER WE HAVE REPEATS
18 OR NOT. WE MAY. WE MIGHT NOT. I HAVE NO WAY OF KNOWING AT
19 THIS POINT.

20 MR. PIUZE: OKAY.

21 THE COURT: ALL RIGHT. 129. I HAVE HILL & KNOWLTON,
22 JUNE 25TH, '54 STATEMENT CONCERNING THE ORIGIN AND PURPOSE OF
23 TOBACCO -- TOBACCO INDUSTRY -- I CAN'T READ MY WRITING FOR
24 THE LAST PART.

25 AND ARE THERE ANY OBJECTIONS TO THAT, APART
26 FROM YOUR STANDARD OBJECTIONS, MR. GARDNER?

27 MR. GARDNER: NO, YOUR HONOR.

28 THE COURT: 129 IS RECEIVED INTO EVIDENCE.

7208

1 (EVID. - 129)

2

3 THE COURT: 130 IS THE AUGUST 17TH, 1954 MEMO FROM
4 THOMPSON TO HARTNETT.

5 ANY OBJECTION?

6 MR. GARDNER: OTHER THAN THOSE PREVIOUSLY STATED,
7 YOUR HONOR.

8 THE COURT: 130 IS RECEIVED INTO EVIDENCE.

9

10 (EVID. - 130)

11

12 THE COURT: 131. THE DOCUMENT APPENDED TO 130. 130
13 WAS THE COVER LETTER. 131 HAD A LONG DOCUMENT OR SOME SORT
14 OF A DOCUMENT ATTACHED TO IT.

15 MR. GARDNER: NONE OTHER THAN THOSE PREVIOUSLY
16 STATED, YOUR HONOR.

17 THE COURT: WASN'T THAT ONE IN, MR. PIUZE?

18 MR. PIUZE: YES.

19 THE COURT: 131 IS RECEIVED INTO EVIDENCE.

20

21 (EVID. - 131)

22

23 THE COURT: 132, THE MARCH 23RD, '57 TIRC PRESS

24 RELEASE.
25 ANY OBJECTION?
26 MR. GARDNER: NONE OTHER THAN THOSE PREVIOUSLY
27 STATED, YOUR HONOR.
28 THE COURT: 132 IS RECEIVED INTO EVIDENCE.
7209
1 (EVID. - 132)
2
3 THE COURT: 133 IS THE BLOWUP OF THE 1957 POINT,
4 COUNTERPOINT. I KNOW WE HAD SEVERAL DISCUSSIONS ABOUT IT.
5 AND I'M GOING TO ASSUME THAT YOU WISH TO PRESERVE ALL THE
6 OBJECTIONS THAT YOU'VE ALREADY MADE, MR. GARDNER.
7 MR. GARDNER: THANK YOU, YOUR HONOR.
8 THE COURT: ARE THERE ANY OTHER ONES?
9 MR. GARDNER: NONE OTHER THAN THOSE PREVIOUSLY
10 STATED.
11 THE COURT: 133 IS RECEIVED INTO EVIDENCE.
12
13 (EVID. - 133)
14
15 THE COURT: 134, THE TIRC PRESS RELEASE DATED
16 JUNE 4TH, '57.
17 ANY OBJECTIONS AS TO -- OTHER THAN WHAT YOU'VE
18 ALREADY GONE THROUGH, MR. GARDNER?
19 MR. GARDNER: NO, YOUR HONOR.
20 THE COURT: 134 IS RECEIVED INTO EVIDENCE.
21
22 (EVID. - 134)
23
24 THE COURT: MR. PIUZE, I'M MAKING THE ASSUMPTION THAT
25 YOU WANT EVERYTHING THAT YOU HAVE ASKED OR SHOWED IN.
26 AM I RIGHT ABOUT THAT?
27 MR. PIUZE: YES. AND IF IT TURNS OUT THAT'S NOT THE
28 CASE, I'LL PIPE UP. SILENCE WILL BE MY DESIRE TO HAVE IT IN
7210
1 EVIDENCE.
2 THE COURT: FINE.
3 135, THE JUNE 27TH, '57 TIRC PRESS RELEASE.
4 ANY OBJECTIONS, APART FROM WHAT YOU'VE
5 PREVIOUSLY STATED, MR. GARDNER?
6 MR. GARDNER: NO, YOUR HONOR.
7 THE COURT: THAT'S RECEIVED INTO EVIDENCE.
8
9 (EVID. - 135)
10
11 THE COURT: 136, THE JULY 12TH, '57 TIRC PRESS
12 RELEASE.
13 AND 137, THE JULY 15TH, '57 TIRC PRESS RELEASE.
14 LET ME ADD ON THE 138, THE TIRC PRESS RELEASE
15 DATED DECEMBER 16TH, '57.
16 ANY OBJECTION TO THOSE, APART FROM WHAT YOU
17 PREVIOUSLY STATED?
18 MR. GARDNER: NO, YOUR HONOR.
19 THE COURT: 136, 137, 138 ARE RECEIVED INTO EVIDENCE.
20
21 (EVID. - 136 THROUGH 138)
22
23 THE COURT: 139 IS THE PRESS RELEASE DATED 11-27-59.
24 AND 140 IS THE PRESS RELEASE DATED
25 NOVEMBER 27TH, '59.
26 APART FROM THE OBJECTIONS -- THERE'S TWO OF
27 THEM, I GUESS -- APART FROM THE OBJECTIONS PREVIOUSLY STATED,
28 ANY FURTHER OBJECTIONS?

7211

1 MR. GARDNER: NO, YOUR HONOR.
2 THE COURT: 139 AND 140 ARE RECEIVED INTO EVIDENCE.
3
4 (EVID. - 139 AND 140)

5
6 THE COURT: 141, THE TOBACCO INDUSTRY MEMO DATED
7 NOVEMBER 27TH, '59.
8 APART FROM THE OBJECTIONS WE'VE ALREADY DEALT
9 WITH, ANY OTHER ONES?

10 MR. GARDNER: NO, YOUR HONOR.
11 THE COURT: 141 IS RECEIVED INTO EVIDENCE.
12
13 (EVID. - 141)

14
15 THE COURT: AND 142 IS A BLOWUP OF PORTIONS OF 139
16 AND THROUGH 141. I'M GOING TO ALLOW THAT INTO EVIDENCE OVER
17 AND ABOVE MR. GARDNER'S VIGOROUS OBJECTIONS.

18 MR. GARDNER: WHICH ONE ARE WE TALKING ABOUT,
19 YOUR HONOR?

20 THE COURT: 142 IS THE BLOWUP OF SPECIFIC PORTIONS OF
21 139, 140 AND 141.

22 MR. GARDNER: CAN I JUST MAKE SURE I KNOW WHAT WE'RE
23 TALKING ABOUT, YOUR HONOR?

24 THE COURT: SURE.

25 MR. GARDNER: I'M SORRY.

26 THE COURT: NO PROBLEM.

27 MR. GARDNER: SO WE'RE TALKING THIS, YOUR HONOR, 142?

28 THE COURT: YES. IS THAT -- I DON'T THINK THAT ONE'S

7212

1 IT. IS THAT ONE IT?

2 MR. GARDNER: WHAT NUMBER DID YOU READ, YOUR HONOR?

3 THE COURT: 142.

4 MR. GARDNER: YES. THIS IS IT.

5 THE COURT: THAT'S IT. IT'S A HALF-BAKED ONE, HUH?

6 MR. GARDNER: NO. NO OBJECTIONS OTHER THAN THOSE
7 PREVIOUSLY STATED.

8 THE COURT: ALL RIGHT. 142 IS RECEIVED INTO
9 EVIDENCE.

10
11 (EVID. - 142)

12
13 THE COURT: 143, I HAVE AS THE HILL & KNOWLTON
14 FEBRUARY 5TH, '58 LETTER TO HILL FROM HAHN.

15 ANY OBJECTION, APART FROM WHAT YOU'VE ALREADY
16 GONE THROUGH?

17 MR. GARDNER: NO, YOUR HONOR.

18 THE COURT: 143 IS RECEIVED INTO EVIDENCE.

19
20 (EVID. - 143)

21
22 THE COURT: 144 IS A NOVEMBER 9TH, '53 LIGHT
23 ADVERTISEMENT.

24 ANY OBJECTION?

25 MR. GARDNER: NO, YOUR HONOR.

26 THE COURT: JUST SO THAT WE'RE CLEAR, WE'VE GOT THE
27 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154.

28 LET'S STOP AT 152. THOSE ARE ALL

7213

1 ADVERTISEMENTS.

2 DO YOU HAVE ANY OBJECTION TO THOSE, APART FROM
3 WHICH YOU'VE PREVIOUSLY STATED EARLIER?

4 MR. GARDNER: NO, YOUR HONOR. I JUST WANT TO MAKE

5 SURE, INCLUDING THE OBJECTIONS THAT, YOU KNOW, YOU'RE
6 LETTING, OVER THE OBJECTIONS THAT I STATED EARLIER, THAT
7 INCLUDES THE OBJECTIONS LAID OUT IN THE MOTION IN LIMINE.
8 THE COURT: YES.
9 MR. GARDNER: AND ARGUMENTS -- AND ARGUMENTS
10 YESTERDAY AND TODAY.
11 THE COURT: YES. IS THAT YOUR UNDERSTANDING,
12 MR. PIUZE?
13 MR. PIUZE: YES.
14 THE COURT: ALL RIGHT. SO 144 THROUGH 152 ARE
15 RECEIVED INTO EVIDENCE.
16
17 (EVID. - 144 THROUGH 152)
18
19 THE COURT: NOW, 153 AND 154 ARE THE BLOCKING CHARTS
20 OF T.B. SPONSORSHIP.
21 153 IS THE GENERIC ONE, AND 154 IS THE BLOWUP
22 OF THE PHILIP MORRIS BLOCKING -- ANY -- BLOCKING CHART.
23 ANY OBJECTION AS TO --
24 MR. GARDNER: NONE OTHER THAN THOSE PREVIOUSLY
25 STATED.
26 THE COURT: ALL RIGHT. 153, 154 ARE RECEIVED INTO
27 EVIDENCE.
28
7214
1 (EVID. - 153 AND 154)
2
3 THE COURT: 155 ARE THE VIDEOS OF COMMERCIALS.
4 ANY OBJECTION AS TO 155?
5 MR. GARDNER: NONE OTHER THAN THOSE PREVIOUSLY
6 STATED.
7 THE COURT: 155 IS RECEIVED INTO EVIDENCE.
8
9 (EVID. - 155)
10
11 THE COURT: 156 IS A MARLBORO AD BLOWUP.
12 157 IS A MARLBORO "LIFE" MAGAZINE
13 ADVERTISEMENT.
14 158 IS A 1965 "LIFE" AD FOR MARLBORO.
15 159 IS AN AUGUST 2ND, '68 MARLBORO AD.
16 160, A DECEMBER 13TH, '68 "LIFE" MARLBORO AD.
17 161, AN APRIL 25TH, '61 MARLBORO AD.
18 162 IS AN OCTOBER 3RD, '69 MARLBORO AD.
19 163 IS A MARCH 6TH, '70 BENSON & HEDGES AD.
20 164, A MARLBORO AD, JUNE 5TH, '70.
21 165 IS A NOVEMBER 27TH, '70 BENSON & HEDGES AD.
22 ANY OBJECTION TO THOSE, OTHER THAN THOSE
23 PREVIOUSLY STATED IN WHATEVER FORM ON WHATEVER DAY,
24 MR. GARDNER?
25 MR. GARDNER: NO, YOUR HONOR.
26 THE COURT: OKAY. 156 THROUGH 165 ARE RECEIVED IN
27 EVIDENCE.
28
7215
1 (EVID. - 156 THROUGH 165)
2
3 THE COURT: 166 IS A BENSON & HEDGES VIDEO.
4 ANY OBJECTION TO THAT, APART FROM THOSE
5 PREVIOUSLY STATED?
6 MR. GARDNER: NO, YOUR HONOR.
7 THE COURT: 166 IS RECEIVED INTO EVIDENCE.
8
9 (EVID. - 166)

10
11 THE COURT: 167, DECEMBER 3RD, '71, BENSON & HEDGES
12 AD.
13 168, MARLBORO AD.
14 169, MARLBORO AD.
15 170, A 1996 MARLBORO AD.
16 171, A 1992 MARLBORO AD.
17 ANY OBJECTIONS AS TO THOSE, OTHER THAN THOSE
18 PREVIOUSLY STATED?
19 MR. GARDNER: WHAT WAS THE LAST NUMBER, YOUR HONOR?
20 THE COURT: 171, WHICH WAS THE 1992 MARLBORO AD.
21 MR. GARDNER: NO OBJECTIONS, OTHER THAN THOSE
22 PREVIOUSLY STATED, YOUR HONOR.
23 THE COURT: 167 THROUGH 171 ARE RECEIVED INTO
24 EVIDENCE.
25
26 (EVID. - 167 THROUGH 171)
27
28 THE COURT: 172 IS A BLOWUP OF THE TIME LINE.
7216
1 IS THAT THAT DOUBLE PANELED HOLE?
2 MR. GARDNER: IT IS, YOUR HONOR.
3 THE COURT: I'M GOING TO RULE ON THAT LATER BECAUSE
4 OF THE OTHER WORDING ON IT. SO I'M GOING TO COME BACK TO
5 THAT. GENERALLY, I DON'T HAVE A PROBLEM WITH MOST OF IT, BUT
6 I WANT TO CONSIDER IT WHEN WE'RE ALL DONE WITH IT. SO I'M
7 GOING TO COME BACK TO 172.
8 173 IS THE "U.S. NEWS AND WORLD REPORT,"
9 FEBRUARY '54.
10 ANY OBJECTION TO THAT, OTHER THAN THOSE
11 PREVIOUSLY STATED?
12 I'M SORRY. THAT'S YOURS.
13 MR. PIUZE: YES. IT'S STRAIGHT HEARSAY. IT'S
14 STRAIGHT HEARSAY THAT NO ONE HAS READ, REVIEWED OR RELIED
15 UPON. IT'S JUST "U.S. NEWS AND WORLD REPORT." WHO CARES?
16 HE DIDN'T READ IT. HE DIDN'T SAY HE READ IT.
17 IT WAS NEVER ESTABLISHED HE READ IT. IT SHOULDN'T BE IN
18 EVIDENCE.
19 THE COURT: HELP ME OUT, MR. GARDNER. I REMEMBER
20 LOOKING AT IT REAL QUICKLY. I JUST CAN'T REMEMBER WHICH ONE
21 IT WAS.
22 MR. GARDNER: THIS IS THE ONE, YOUR HONOR, THAT HAS
23 THE QUESTION AND ANSWER FROM DR. HAMMOND: IS THERE PROOF
24 THAT SMOKING CAUSES LUNG CANCER?
25 THE COURT: AND THAT WAS TO SHOW THAT THERE WAS
26 CONTROVERSY OVER THE ISSUE, RIGHT?
27 MR. GARDNER: YES, YOUR HONOR.
28 THE COURT: THE COURT'S GOING TO ALLOW IT IN UNDER
7217
1 1331 OF THE EVIDENCE CODE.
2 MR. PIUZE: RESPECTFULLY, 1331 IS THE FOUNDATION
3 ANCIENT DOCUMENT. THAT DOESN'T DEAL WITH THE OBJECTION OF
4 HEARSAY, DOES IT?
5 MR. GARDNER: ACTUALLY -- I'M SORRY, YOUR HONOR.
6 THE COURT: IT'S UNDER THE HEARSAY SECTION, I THINK,
7 ISN'T IT, MR. PIUZE?
8 YOU TAUGHT ME ABOUT IT, MR. PIUZE.
9 MR. PIUZE: NO. IT IS. NO, I AGREE. AND HAVING
10 READ, ACTUALLY, YOU KNOW, YOUR HONOR, HAVING READ 1331 AND
11 MADE TWO NOTES ON IT, 30 YEARS OLD OR OLDER PASS, ACTED ON AS
12 IF TRUE BY PERSONS WITH INTEREST IN THE MATTER. THERE'S LOTS
13 AND LOTS AND LOTS OF WAYS TO PROVE WHAT HAMMOND SAID, BUT
14 GETTING A HEARSAY QUOTE OUT OF "U.S. NEWS & WORLD REPORT"

15 PROBABLY AIN'T THE BEST, AND I SPENT LOTS OF TIME, AND THIS
16 IS WORSE.

17 THE COURT: YOU HAVE.

18 MR. PIUZE: I KNOW I HAVE.

19 THE COURT: YOUR VIGOROUS OBJECTIONS ARE NOTED AND
20 RESPECTFULLY OVERRULED.

21 MR. PIUZE: YOUR HONOR, IT WASN'T VIGOROUS NOW. IT
22 WAS NOT VIGOROUS.

23 THE COURT: OKAY. YOUR OBJECTIONS ARE NOTED AND
24 RESPECTFULLY OVERRULED.

25
26 (EVID. - 173)

27
28 THE COURT: 1974 EDITORIAL IN THE JOURNAL OF THE
7218

1 AMERICAN MEDICAL ASSOCIATION, DECEMBER 12TH, '59.

2 ANY OBJECTION TO THAT ONE?

3 MR. PIUZE: EXACTLY THE SAME. YOU KNOW WHAT?

4 NO. I WITHDRAW THAT. THERE IS NO OBJECTION TO
5 THAT ONE.

6 THE COURT: OKAY. 174 IS COMING IN.

7
8 (EVID. - 174)

9
10 THE COURT: 175, THE BOOK, "SMOKING." THIS IS THE
11 FOREWORD OF IT, ISN'T IT, THE ONE THAT DR. DOLL WROTE?

12 MR. PIUZE: YES. AND I HAVE A FEELING THAT WAS
13 MARKED AS PART OF AN EXHIBIT FOR DR. DOLL'S DEPO ALREADY.

14 MR. GARDNER: WE HAVEN'T TALKED TO THE COURT ABOUT
15 THAT YET.

16 MR. PIUZE: ANYWAY, NO OBJECTION.

17 THE COURT: OKAY. 175 IS RECEIVED INTO EVIDENCE.

18
19 (EVID. - 175)

20
21 THE COURT: 176, THE FEBRUARY '62 DR. LEWIS ROBBINS
22 ARTICLE.

23 ANY OBJECTIONS TO THAT ONE?

24 MR. PIUZE: NO.

25 THE COURT: 176 IS RECEIVED INTO EVIDENCE.

26
27 (EVID. - 176)

28
7219

1 THE COURT: 177, EXCERPT FROM THE 1964 SURGEON
2 GENERAL REPORT.

3 ANY OBJECTION TO THAT ONE?

4 MR. PIUZE: I'VE GOT A QUERY.

5 THE COURT: YES.

6 MR. PIUZE: I BELIEVE I'VE BEEN TOLD THE SURGEON
7 GENERAL'S REPORTS, MANY OF THEM, ARE GOING TO BE OFFERED IN
8 TOTO.

9 MS. WILKINSON: I THINK WE ALREADY PUT IN THE 1964
10 REPORT, RIGHT, IN TOTAL.

11 THE COURT: THE WHOLE REPORT, I THINK, IS IN, BUT I
12 WAS ALLOWING IN PORTIONS OF THINGS ON THE SAME -- FOR THE
13 SAME REASON THAT I DID BEFORE, WHICH IS, BASICALLY, THEY
14 DON'T HAVE TO WADE THROUGH THE WHOLE REPORT, AND BASICALLY,
15 I'VE DONE THAT FOR YOU, MR. PIUZE.

16 SO WHAT'S GOOD FOR THE GOOSE IS GOOD FOR THE
17 GANDER, AS THEY SAY.

18 MR. PIUZE: I AGREE WITH THAT.

19 THE COURT: THANK YOU. 177 IS RECEIVED INTO

20 EVIDENCE.
21
22 (EVID. - 177)
23
24 MR. PIUZE: CAN I BE THE GANDER?
25 THE COURT: YOU CAN BE WHATEVER ONE THAT YOU WANT.
26 MR. GARDNER: THAT DEPENDS ON A LOT OF QUESTIONS I'M
27 NOT GOING TO ASK.
28 THE COURT: 178, THE "LIFE" -- I CAN'T READ WHAT I
7220
1 WROTE HERE -- MAGAZINE, JANUARY 24TH, '64 AD.
2 ANY OBJECTION?
3 MR. PIUZE: NO.
4 THE COURT: JANUARY 24TH, '64.
5 MR. PIUZE: NO.
6 THE COURT: 178 IS RECEIVED INTO EVIDENCE.
7
8 (EVID. - 178)
9
10 THE COURT: OKAY.
11 MR. GARDNER: WHAT --
12 MR. PIUZE: EXCUSE ME, YOUR HONOR.
13 MR. GARDNER: WE MAY NEED TO JUST DO THIS FOR A
14 SECOND
15 MR. PIUZE: NEITHER OF US IS EXACTLY SURE WHAT THE
16 JANUARY 24TH, '64 "LIFE" IS.
17 THE COURT: WELL, IT WAS A DEFENDANTS' ONE.
18 MR. PIUZE: I KNOW.
19 THE COURT: AND I HAVE DOWN "LIFE" MAGAZINE. IT'S AN
20 AD OF SOME SORT, I THINK. THE JANUARY 24TH '64.
21 MR. GARDNER: RIGHT. RIGHT, YOUR HONOR.
22 THE COURT: I'LL COME BACK TO THAT. IT'S NOT A
23 PROBLEM. I'LL COME BACK TO IT.
24 179, THE AD FROM MC DONALD'S.
25 180, THE BEER COMMERCIAL.
26 181, THE TACO BELL AD.
27 ANY OBJECTION TO 179 THROUGH 181?
28 MR. PIUZE: NO.
7221
1 THE COURT: 179 TO 181 ARE RECEIVED INTO EVIDENCE.
2
3 (EVID. - 179 THROUGH 181)
4
5 THE COURT: 182 IS THE 1953 CAMEL AD OF
6 R.J. REYNOLDS.
7 ANY OBJECTION TO THAT ONE?
8 MR. PIUZE?
9 MR. PIUZE: NO.
10 THE COURT: 182 IS IN EVIDENCE.
11
12 (EVID. - 182)
13
14 THE COURT: 183, ARTICLE DATED DECEMBER 21ST, '53
15 FROM "ADVERTISING AGE."
16 ANY OBJECTION?
17 MR. PIUZE: NO.
18 THE COURT: 183 IS RECEIVED INTO EVIDENCE.
19
20 (EVID. - 183)
21
22 THE COURT: 184, BLOWUP OF SKYY VODKA AD.
23 185, BLOWUP OF SMIRNOFF VODKA AD.
24 186, BLOWUP OF JOSE CUERVO AD.

25 ANY OBJECTIONS TO 184 THROUGH 186?
26 MR. PIUZE: NO.
27 THE COURT: 184 THROUGH 186 ARE RECEIVED INTO
28 EVIDENCE.
7222
1 (EVID. - 184 THROUGH 186)
2
3 THE COURT: 187, VIDEO OF NBC NEWS COVERAGE. THIS IS
4 BACK IN '64.
5 ANY OBJECTION?
6 MR. PIUZE: ON THE SAME GROUNDS. ON THE SAME
7 NONVIGOROUS GROUNDS THAT I PREVIOUSLY USED FOR THE
8 "U.S. NEWS & WORLD REPORT."
9 THE COURT: OKAY. WELL, I LET IT IN AFTER HAVING
10 DR. POLLAY AT SIDEBAR WHERE HE TOLD ME THAT HE DID QUITE A
11 BIT OF RESEARCH INTO THE -- WHAT WAS IT -- THE INFORMATION --
12 HELP ME OUT.
13 MR. GARDNER: ENVIRONMENT.
14 THE COURT: INFORMATION ENVIRONMENT. THANKS, FOLKS.
15 THAT WAS PRESENT AT OR AROUND THE TIME THAT THE
16 SURGEON GENERAL REPORT CAME OUT, AND WHETHER HE HAD SEEN THAT
17 ONE OR NOT SPECIFICALLY, HE CERTAINLY PROFESSED KNOWLEDGE OF
18 THE INFORMATION ENVIRONMENT OF THE TIME AND INDICATED THAT
19 THAT'S THE KIND OF THING HE LOOKED AT.
20 SO YOUR OBJECTION IS NOTED AND RESPECTFULLY
21 OVERRULED. 187 IS IN EVIDENCE.
22
23 (EVID. - 187)
24
25 MR. PIUZE: ALL OF WHICH FOR THE REASONS THAT IT WAS
26 A NONVIGOROUS OBJECTION.
27 THE COURT: ALL RIGHT.
28 188 AND 189 ARE PLAINTIFF'S PHILIP MORRIS ADS
7223
1 FROM 1953.
2 ANY OBJECTION TO 188, 189?
3 MR. GARDNER: NONE OTHER THAN THOSE PREVIOUSLY
4 STATED, YOUR HONOR.
5 THE COURT: 188 AND 189 ARE IN EVIDENCE.
6
7 (EVID. - 188 AND 189)
8
9 THE COURT: 190, THE AD FROM MARLBORO IN 1953. THIS
10 IS THE DEFENDANTS' SUBMISSION.
11 MR. PIUZE, ANY OBJECTION?
12 MR. PIUZE: NO.
13 THE COURT: 190 IS RECEIVED INTO EVIDENCE.
14
15 (EVID. - 190)
16
17 THE COURT: 191 IS A PHILIP MORRIS AD.
18 ANY OBJECTION?
19 MR. PIUZE.
20 MR. PIUZE: NO.
21 THE COURT: 191 RECEIVED INTO EVIDENCE.
22
23 (EVID. - 191)
24
25 THE COURT: OKAY. WHAT DID YOU FOLKS DECIDE ON 178,
26 THE "LIFE" MAGAZINE, JANUARY 24TH, '64, THING?
27 DID I WRITE DOWN THE WRONG DATE?
28 MS. WILKINSON: NO. IT WAS MY FAULT, YOUR HONOR.
7224

1 I'M HOLDING IT, AND I FOUND IT. AND MY MISTAKE.
2 THE COURT: ALL RIGHT.
3 MR. PIUZE, SINCE IT'S DEFENDANTS' AD, DO YOU
4 HAVE ANY OBJECTION, 178?
5 MR. PIUZE: OKAY, YOUR HONOR. IT'S NOT AN AD. IT'S
6 A "LIFE" MAGAZINE QUOTING A SCIENTIST. QUADRUPLE HEARSAY.
7 IT'S THE SAME TYPE OF OBJECTION THAT I PREVIOUSLY MADE FOR
8 THE "NEWSWEEK."
9 THE COURT: HOW ABOUT GIVING IT OVER TO ME FOR A
10 SECOND TO REFRESH MY MEMORY AS TO WHAT IT WAS.
11 MR. GARDNER: SURE.
12 THE COURT: I DIDN'T WRITE "AD." I WROTE "LIFE
13 MAGAZINE" AND THE DATE. THAT'S ALL I'VE GOT DOWN HERE.
14 DENIED. THIS IS PART OF THE INFORMATION
15 ENVIRONMENT, FOLKS. AND THAT'S COMING IN.
16
17 (EVID. - 178)
18
19 MR. GARDNER: THANK YOU, YOUR HONOR.
20 THE COURT: ALL RIGHT. EXCEPT FOR A COUPLE OF THINGS
21 THAT YOU FOLKS WERE GOING TO LOOK AT, WHICH ARE THE BLOWUPS
22 OF THE FRANK STATEMENT, TO MAKE SURE WE DIDN'T HAVE
23 DUPLICATES OF DUPLICATES IN HERE, THAT WAS 126 THROUGH 128, I
24 THINK WE'RE DONE.
25 MR. GARDNER: I THINK YOU'RE RIGHT, YOUR HONOR.
26 THE COURT: THANK GOD.
27 OKAY. I'LL SEE YOU AT A QUARTER TO 8:00
28 TOMORROW MORNING. I ALMOST SAID QUARTER TO 7:00.
7225
1 OBJECTIONS. CUMMINGS EXHIBITS. WHAT IS
2 HAPPENING WITH THIS?
3 MS. WILKINSON: IF WE CAN MEET AT 7:45, YOUR HONOR,
4 I'LL HAVE TIME TO HAVE EVERYTHING ORGANIZED. I'LL HAVE
5 COPIES FOR YOU, MY OBJECTIONS READY, AND WE SHOULD BE ABLE TO
6 MOTOR THROUGH.
7 THESE ARE MORE --
8 THE COURT: ANYTHING ELSE TODAY?
9 MR. GOLDSTEIN: I'M NOT SURE. I HOPE NOT. BUT --
10 MS. WILKINSON: YOUR HONOR, I'M DOING MY ABSOLUTE
11 BEST, BUT I'M GETTING NEW EXHIBITS 24 HOURS LATER, AND MAYBE
12 WE SHOULD SAY 7:30.
13 THE COURT: DO YOU WANT 7:30, MR. PIUZE?
14 I'M WILLING TO COME IN AT 7:30. THERE'S A SALE
15 GOING ON FOR 7:30 IN THE MORNING RATHER THAN 7:45.
16 MS. WILKINSON: I HAVE ONE DEAL FOR MR. PIUZE --
17 MR. PIUZE: I'M NOT ADVOCATING IT.
18 MS. WILKINSON: -- IF WE CAN AGREE.
19 THE COURT: TELL ME THE TIME.
20 MS. WILKINSON: 7:45.
21 THE COURT: 7:45. OKAY.
22
23 (AT 2:14 P.M. AN ADJOURNMENT WAS TAKEN
24 UNTIL THURSDAY, JUNE 25, 2003 AT 7:45 A.M.)
25
26
27
28